

The complaint

Mrs S and Mr S's complaint is, in essence, that First Holiday Finance Ltd (the 'Lender') acted unfairly and unreasonably by (1) being party to unfair credit relationships 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

Mrs S and Mr S purchased membership of timeshares (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 12 October 2015 and on 5 October 2016 (the 'Times of Sale').

They first entered into an agreement with the Supplier ('FPOC2a') to buy 900 fractional points at a cost of £13,733.

They then entered into another agreement with the supplier ('FPOC2b') to buy 1,420 fractional points at a cost of £35,001. But after trading in their existing timeshare, they paid £21,268.

Fractional Club membership was asset backed – which meant it gave Mrs S and Mr S 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.

Mrs S and Mr S paid for FPOC2a membership by taking finance of £13,233 from the Lender in both of their names ('Credit Agreement 1'). They paid a deposit of £500 separate to this. They paid for FPOC2b membership using finance of £20,768 and again paid a separate £500 deposit ('Credit Agreement 2').

Mrs S and Mr S – using a professional representative (the 'PR') – wrote two letters to the Lender on 17 February 2022, one for each agreement Mr S and Mrs had with it (the 'Letters of Complaint')¹ to raise a number of different concerns. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mrs S and Mr S's concerns as a complaint and issued its final response letter on 28 February 2022, rejecting it on every ground.

I issued a provisional decision in August 2025 setting out why I didn't plan to uphold Mrs S and Mr S's complaint. 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.

¹ Save for the different dates of sale, these two letters were worded identically.

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 Times 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 Mrs S and Mr S could make against the Supplier.

However, creditors have no means of knowing what section 75 liabilities they may have, nor of investigating such liabilities nor of recovering them from suppliers, unless or until debtors raise section 75 claims against them; and raising the claim, if it's a valid one, brings the creditor under a duty then to honour its liability.

But it would not be fair or reasonable to require a creditor to respond to section 75 claims however long in the past they arose. And our service must decide complaints based on what is fair and reasonable in all the circumstances of a case.

The Limitations Act 1980 (the 'LA') imposes a six-year limitation period on the relevant claims. Taking into account this time period, the particular nature of liability under section 75, and the need for the debtor to raise a section 75 claim against their creditor before any cause for complaint to our service can arise, I consider it was fair and reasonable for a creditor not to have to look into or honour a section 75 claim that was first raised with it by the debtor after the claim had become time barred under the LA.

The alleged misrepresentations in respect of FPOC2a happened when an agreement was entered into on 12 October 2015.

In these circumstances Mrs S and Mr S had brought their section 75 claim to the Lender on 19 January 2022 which is more than six years after they entered into an agreement with the Lender on 12 October 2015 – which I consider to be around the time when the cause of action for misrepresentation to have accrued.

Where it is unlikely a claim against the supplier could succeed due to the expiry of the likely relevant limitation periods of six years, I think it would have been fair and reasonable for the Lender to decline the section 75 claim.

For these reasons, therefore, I do not think the Lender is liable to pay Mrs S and Mr S any compensation for the alleged misrepresentations of the Supplier in respect of FPOC2a. 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.

Mrs S and Mr S entered into the agreement to purchase FPOC2b on 5 October 2016. This was within six years of when they brought their section 75 claim to the Lender. So, I do not

find it would have been reasonable for the Lender to decline the section 75 claim relating to this transaction on the basis the relevant limitation had expired.

Certain conditions must be met if the protection afforded to consumers under section 75 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 cash price attached to FPOC2b membership before the trade in of Mrs S and Mr S's existing timeshare was over £30,000, which would have meant s.75 did not apply to Mrs S and Mr S claim, but post trade in was under this amount. So, there are questions as to whether s.75 did apply to Mrs S and Mr S's claim or not, depending on how that price reduction might be viewed. I don't think I need to answer those questions in this case however because I can consider Mrs S and Mr S's allegations of misrepresentation as part my overall considerations as to whether their relationship with the Lender was unfair under s.140a of the CCA. And in any event, as will become clear when I address those allegations later in this decision, I do not find that misrepresentations were likely to have made by the Supplier in respect of FPOC2b at the Time of Sale. All of this considered, I'm not persuaded the Lender treated Mrs S and Mr S unfairly by not paying a claim under section 75.

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

Mrs S and Mr S also say that the credit relationship between them and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Times 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 relationships between Mrs S and Mr S 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 Mrs S and Mr S'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."²

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

² The Court of Appeal's decision in *Scotland* was recently followed in *Smith*.

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 relationships between Mrs S and Mr S and the Lender along with all of the circumstances of the complaint and I do not think the credit relationships 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 Supplier's sales and marketing practices at the Times of Sale – which includes training material that I think is likely to be relevant to the sale;*
- 2. The provision of information by the Supplier at the Times 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 Times of Sale; and*
- 4. The inherent probabilities of the sale given its circumstances.*

I have then considered the impact of these on the fairness of the credit relationships between Mrs S and Mr S and the Lender.

I would note at this point that it's not clear whether Credit Agreement 2 was used to consolidate Credit Agreement 1 – it doesn't appear to be the case from the documents I've seen. If this was the case it means that both credit agreements between Mrs S and Mr S and the Lender would be related and any unfairness arising out of the first sale would be a relevant consideration when thinking about Credit Agreement 2 under s.140a CCA³.

However, seeing as I will consider whether the circumstances leading to the entering of either credit agreement resulted in an unfair relationship between Mrs S and Mr S and the Lender, and given my conclusions on that point, I don't think it makes a difference here whether Credit Agreement 2 consolidated Credit Agreement 1 or not.

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

The PR says that the right checks weren't carried out before the Lender lent to Mrs S and Mr S. 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 Mrs S and Mr S was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender

³ s.140c of the CCA sets out that an agreement related to a credit agreement (the 'main agreement') is a reference to a credit agreement consolidated by the main agreement

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

The PR also says that there were one or more unfair contract terms in the Purchase Agreements. But as I can't see that any such terms were operated unfairly against Mrs S and Mr S in practice, nor that any such terms led them to behave in a certain way to their detriment, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

I'm not persuaded, therefore, that Mrs S and Mr S's credit relationships with the Lender were rendered unfair to them under Section 140A for the reason above. But there is another reason, perhaps the main reason, why they say their credit relationships with the Lender were 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 Times 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 Mrs S and Mr S's Fractional Club memberships met the definition of "timeshare contract" and were 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 Times 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 Times 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.*

Mrs S and Mr S's shares in the Allocated Properties 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 Mrs S and Mr S 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 Mrs S and Mr S, 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 Mrs S and Mr S as an investment.

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

Nonetheless, it is not necessary to make a formal finding on that particular issue because, even if the Supplier did breach Regulation 14(3) at the Times of Sale, I am not persuaded that makes a difference to the outcome in this complaint anyway.

Were the credit relationships between the Lender and Mrs S and Mr S 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 Mrs S and Mr S 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 Mrs S and Mr S, 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.

I've thought carefully about everything Mrs S and Mr S have told us about both sales. However, I'm not persuaded there is any indication that they were induced into the purchases on the basis that Fractional Club membership was an investment from which they would make a financial gain. I'll explain why.

I accept that upon making their complaint to the Lender about both sales in February 2022 the PR said things such as:

"(they were) told that (they) had purchased an investment and that (their) timeshare would Considerably appreciate in value."

And,

"(they were) told that (they) would have a share of a property and its value would considerably increase, therefore (they were) promised a considerable return on investment".

And,

"The misrepresentation was actionable, my client believed in it. relied on it and as a result was induced to enter into the contract, which otherwise would not have done and was materially influenced by the misrepresentation, because relying on this representation, decided to enter into the contract"

However, there is very little in the Letter of Complaint which appears to include any of Mrs S and Mr S's individual recollections from the Times of Sale and it seems they were not Mrs S and Mr S's own words.

That is not to say that the Letter of Complaint could not possibly have reflected Mrs S and Mr S's experiences at the Times of Sale. However, in this particular case I think the evidence, including a personal statement the PR provided from Mrs S and Mr S in March 2024, suggests that they did not place the importance on receiving a profit from the investment that the PR said they did in the Letter of Complaint.

FPOC2a

In said personal statement Mrs S and Mr S describe some of their recollections of the sale of FPOC2a in their own words. Some of what they said includes the following:

"The were very aggressive with all there pitches and saying we need time to consider but they used tactics like we can make money for this and we was going to make

money from the property once sold at the end of the contract, and also sell it to family and friends so we could make money..... we did feel pressured to sign.”

“We did try to leave so they took us out to another villa and then back again to which we agreed to sign”

“we was hounded for 12hrs or more”.

I have found it difficult to place significant weight on Mrs S and Mr S’s recollections in their email. That is because they have only set down, in brief terms, their memories of the sale. And their email was sent in March 2024, some nine years after the first sale. I have no reason to doubt their memories are honestly held, but I am aware that the passage of time is likely to have affected their ability to recall precisely what was said during the sales. Further, they have been involved in the complaints process for some time and simply being involved in that process is likely to have an effect on the memories.

In any event, my reading of Mrs S and Mr S’s statement is that having been told they were going to “make money” from the Allocated Property once sold, Mrs S and Mr S still tried to leave the presentation, and it was only after they had been shown “another villa” that they decided to go ahead with the purchase. It seems to me therefore that the prospect of a financial gain or profit was not the reason for Mrs S and Mr S’s purchase as they were willing to pass on that prospect and walk away from the sale. It seems that what tipped the balance for Mrs S and Mr S is what happened when they were shown another property after trying to leave and the pressure they say they were put under.

While FPOC2a did not confer a preferential right to use a specific property, it’s not implausible that Mrs S and Mr S were attracted the kind of accommodation they could potentially book using their fractional points having been taken to see another of the Supplier’s offerings.

Mrs S and Mr S also talk about how long the supplier’s sales pitch lasted and how they felt “hounded” into purchasing FPOC2a membership. I’ll address the allegation of a pressured sale more directly a little later. But it seems that perhaps another reason for Mrs S and Mr S’s purchase is that they had become weary from a lengthy sales presentation.

From what I have seen and been told to date, although I accept it was possible that Mrs S and Mr S were told that they could make money, I don’t think the investment element of the membership was the reason for Mrs S and Mr S’s purchase of FPOC2a.

FPOC2b

In respect of the sale of FPOC2b Mrs S and Mr S said the following in their witness testimony:

“We had them hard selling on then next holiday in 2016 as they told us we didn’t have enough points to carry on as they had come up with the signature range and we would double are investment. We could also make more money from selling our own holidays to people who we knew we felt very pressured to sign they were very aggressive”.

Mrs S and Mr S reference being pitched the Supplier’s “signature range”. However, looking at the Purchase Agreement that has been provided, they did not purchase membership of the Supplier’s signature collection but rather another membership of its Fractional Club. So, when Mrs S and Mr S talk about being told they could double their money, it’s not clear

whether this was said in relation to their purchase of FPOC2b or whether the Supplier tried to sell them Signature Club membership but they chose not to purchase it.

Mrs S and Mr S said they were told “they didn’t have enough points to carry on”. It’s not clear exactly what was meant by this or the context within which it was said as Mrs S and Mr S’s statement doesn’t go into any more detail. It does suggest to me however that their purchase was perhaps motivated by a desire to increase their points so they could benefit from the potential of more choice or availability. Indeed, their increase from one week under FPOC2a to two weeks under FPOC2b further supports this.

It’s possible that Mrs S and Mr S were interested in both holidays and the investment element, which wouldn’t be surprising given the nature of the product at the centre of this complaint, but from what I have seen and been told to date, I don’t think the investment element of the membership was the reason for their purchase.

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 Mrs S and Mr S’s decision to purchase Fractional Club membership at the Times of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mrs S and Mr S and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

Returning now to the allegations of misrepresentation made by the PR. They include the suggestion that Fractional Club membership had been misrepresented by the Supplier because Mrs S and Mr S were told that they were buying an interest in a specific piece of “real property” when that was not true. However, telling prospective members that they were buying a fraction or share of one of the Supplier’s properties was not untrue. Mrs S and Mr S’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 the PR might question the exact legal mechanism used to give them that interest, it did not change the fact that they acquired such an interest.

The PR said Mrs S and Mr S were told they would have access to the Allocated Properties ‘any time all around the year’. However, this doesn’t appear to be reflected in any of the paperwork from the time Fractional Club membership was sold, including documents signed by Mrs S and Mr S. Unlike another of the Supplier’s offerings, Fractional Club membership did not include preferential rights of use over the Allocated Property on a particular week. For example The Purchase Agreement sets out that “Fractional Points are personal rights and do not transfer or grant the right of use to any allocated property. We acknowledge that the Property Is described below for the sole purposes of Identifying it for the purposes of Its disposal at the Sale Date...”. If that were not the case, Mrs S and Mr S have not explained what the representative said or did to make them think the paperwork was not an accurate reflection of the discussions they had in respect of the use of the Allocated Property.

As to the allegation Mrs S and Mr S were led to believe they could sell the timeshares back to the resort or easily sell it a profit, no further detail has been provided beyond that bare allegation such as what exactly was said by the Supplier to make them think that. I think this is important in respect of this allegation as the members declaration document that Mrs S and Mr S signed to confirm their understanding, said that the Supplier would “not repurchase fractional rights”.

What’s more, as there’s nothing else on file that persuades there were any false statements of existing fact made to Mrs S and Mr S by the Supplier when Fractional Club membership

was sold I do not think there was an actionable misrepresentation by the Supplier for the reasons they allege.

Mrs S and Mr S also talk about how long they were with the Supplier and say that they were pressured by the Supplier into purchasing Fractional Club membership at the Times of Sale. I acknowledge that Mrs S and Mr S 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 the 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. Moreover, they did go on to upgrade their Fractional Club membership to FPOC2b – which I find difficult to understand if the reason they went ahead with the purchase of FPOC2a was because they were pressured into it. And with all of that being the case, there is insufficient evidence to demonstrate that Mrs S and Mr S made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

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

Section 140A: Conclusion

In conclusion, therefore, given all of the facts and circumstances of this complaint, I don't think the credit relationships between the Lender and Mrs S and Mr S were unfair to them for the purposes of Section 140A. And taking everything into account, I think it's fair and reasonable to reject this aspect of the complaint on that basis.

The complaint about the Credit Agreement being unenforceable because it was arranged by a credit broker that was not regulated by the FCA to carry out that activity

The PR said that the Credit Agreements were arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't [and isn't] permitted to enforce the Credit Agreements as a result.

However, having looked at the Financial Ombudsman Service's internal records and the FCA register, I can see that the Lender named on the Credit Agreements as the credit intermediary was at the Times of Sale, authorised by the FCA for credit broking. And in the absence of any evidence to suggest that its Licence did not cover credit broking, I am not persuaded that the Credit Agreement was arranged by an unauthorised credit broker.

The PR said that all of the Supplier's sales representatives are self-employed and so they are not authorised by the FCA for credit broking. However, no evidence has been provided in support of this. What would seem relevant to me is that the 'compliance officer' named on the Credit Agreement documents was representing the company named on the Credit Agreement and that company did hold the required permissions.

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 Mrs S and Mr S's section 75 claim(s), and I am not persuaded that the Lender was party to credit relationships 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."

The Lender accepted my provisional decision.

The PR did not agree with it and provided further comments and evidence it wished for me to consider.

The complaint has therefore been returned to me for a 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, 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:

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 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 my provisional decision in the main relate to the issue of whether the credit relationships between Mrs S and Mr S and the Lender were unfair. In particular, the PR has provided further comments in relation to whether the memberships were sold to Mrs S and Mr S as an investment at the Times of Sale.

As outlined in my provisional decision, the PR originally raised various other points of complaint, all of which I addressed at that time. But they didn't make any further comments in relation to those in their response to my provisional decision. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my provisional decision. 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 PR explained in their response to my provisional decision that they hadn't shared the Investigator's view or my provisional decision on this complaint with Mrs S and Mr S, saying "*this was done in order not to influence their recollections*".

The PR also said Mrs S and Mr S hadn't heard about the judgement handed down in *Shawbrook and BPF v FOS*⁴. The PR said this means Mrs S and Mr S's recollections provided in March 2024 had not been influenced by either the Investigator's view or the aforementioned judgment.

Part of my assessment of the testimony is to consider *when* it was written, and whether it may have been affected by external factors such as the widespread publication of the outcome of *Shawbrook and BPF v FOS*.

I have thought about what the PR has said, but on balance, I don't find it a credible explanation of the contents of Mrs S and Mr S's evidence. Here, the PR responded to our Investigator's view to say that Mrs S and Mr S alleged that Fractional Club membership had been sold to them as an investment and it provided evidence from Mrs S and Mr S to that effect. I fail to understand how Mrs S and Mr S disagreed with the view and PD on the basis that the timeshare was sold as an investment if they didn't know our Investigator's conclusions. It follows, I think it more likely than not, that Mrs S and Mr S did know about our Investigator's view before their evidence was provided.

So, there is a risk that Mrs S and Mr S testimony was coloured by the Investigator's view and/or the outcome in *Shawbrook & BPF v FOS*. And, on balance, the way in which the

⁴ *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*').

evidence has been provided makes me conclude that I can place little weight on it.

But even if I thought I could place more weight on Mrs S and Mr S's testimony, it still doesn't persuade me that any breach of Regulation 14(3) was material to their purchasing decision for broadly the same reasons I gave in my provisional decision. The PR said I had concluded that Mrs S and Mr S were not pressured into their purchases while also concluding it was a reason for their purchase. For clarity, I mean that while Mrs S and Mr S said they felt pressured into their purchases, and that this may have been a reason for their purchases in their mind, the evidence didn't persuade me that anything the supplier said or did led to me to conclude they actually made their purchases because their ability to make that choice had been significantly impaired by the Supplier.

The PR said I falsely identified Mrs S and Mr S's second purchase as fractional club membership when it was in fact signature collection membership. It said this is because the Allocated Property was at a resort containing the Supplier's signature collection accommodation. However, the Purchase Agreement clearly labels the membership as Fractional Property Owners Club. And it contains no preferential right to use the Allocated Property which is a feature of signature collection membership. So, I did not misidentify FPOC2b and this does not change the reasons I gave in my provisional decision for not upholding the complaint in any event.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my provisional decision, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mrs S and Mr S's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mrs S and Mr S and the Lender was unfair to them for this reason.

The PR also says that there was one or more unfair contract terms in the Purchase Agreement for FPOC2b, in particular those relating to when the sales process on the Allocated Property would start as there were contradictions on this in the supporting sales paperwork. But as I can't see that any such terms led Mrs S and Mr S to behave in a certain way to their detriment, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

S140A conclusion

Given all of the factors I've looked at in this part of my decision, including the relevant relationships, arrangements and payments between the Lender and the Supplier and having taken all of them into account, I'm not persuaded that the credit relationships between Mrs S and Mr S and the Lender under the Credit Agreement and related Purchase Agreement were unfair to them. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

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 Mrs S and Mr S's Section 75

claims, and I am not persuaded that the Lender was party to credit relationships with them under the Credit Agreement that were 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 have explained, I do not uphold Mrs S and Mr S's complaint.

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

Michael Ball
Ombudsman