DRN-5936139

The complaint

Mr B'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 him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying claims under Section 75 of the CCA.

What happened

Mr and Mrs B were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Signature Club' – which he bought on 7 September 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2,090 fractional points at a cost of £14,374 (the 'Purchase Agreement') after trading in their existing timeshare.

Signature Club membership was asset backed – which meant it gave Mr and Mrs B more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends. And allowed Mr B to stay in the Allocated Property during a specified week each year.

Mr and Mrs B paid for their Signature Club membership by taking finance of £14,374 from the Lender (the 'Credit Agreement').

Mr and Mrs B divorced, and Mrs B gave up any rights to the timeshare including, it appears, any refund relating to this claim. So, she is not involved in this complaint, and I will only refer to Mr B from this point onwards.

Mr B – using a professional representative (the 'PR') – wrote to the Lender on 13 June 2022 (the 'Letter of Complaint') to raise several different concerns. Since then, the PR has raised some further matters it says are relevant to this outcome of the complaint. 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 Mr B's concerns as a complaint and issued its final response letter on 3 January 2024, rejecting it on every ground.

I issued a provisional decision explaining that I was not planning to uphold the complaint.

I later sent a follow-up email to the Lender and the PR explaining my provisional findings on commission, which were that the commission arrangements between the Lender and Supplier did not make me think the complaint should be upheld.

The Lender accepted my provisional decision but didn't respond to my provisional findings on commission.

The PR responded to say that it accepted my provisional findings on commission, but it disagreed with my provisional decision overall and provided some comments and documents it wanted me to consider when making my final decision.

The legal and regulatory context

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

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here. But I think 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 to my provisional findings, I've considered the case afresh. Having done so, I've reached the same decision as outlined in my provisional findings – and for the same reasons. A copy of my provisional findings is below. And for those reasons, I have decided not to uphold this complaint.

START OF COPY OF PROVISIONAL FINDINGS

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") if there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

It was said in the Letter of Complaint that Signature Club membership had been misrepresented by the Supplier at the Time of Sale because Mr B was:

(1) Told by the Supplier that Signature Club membership had a guaranteed end date when that was not true.

(2) Told by the Supplier that he owned a 'fraction' of the Allocated Property when that was not true as it was owned by a trustee.

(3) Told by the Supplier that Signature Club membership was an "investment" when that was not true.

Neither the PR nor Mr B have set out in any detail what words and/or phrases were allegedly used by the Supplier to misrepresent Signature Club for the reason given in points 1 or 2. However, the PR says that such representations were untrue because the Allocated Property was legally owned by a trustee and there was no indication of what duty of care it had to actively market and sell the property. Further, there is no guarantee that any sale will result at all, leaving prospective members to pay their annual management charge for an indefinite and unspecified period.

However, I cannot see why the phrases in points 1 or 2 above would have been untrue at the Time of Sale even if it was said. It seems to me to reflect the main thrust of the contract Mr B entered into. And while the sale of the Allocated Property could be postponed for up to two years, and longer than that if there were problems selling and the owners agreed, or for an otherwise specified period provided there was unanimous agreement in writing from the owners, that does not render the representation above untrue. So, I am not persuaded that the representation above constituted a false statement of fact even if it was made.

As for point 3, it does not strike me as a misrepresentation even if such a representation had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue – nor was it untrue to tell prospective members that they would receive some money when the allocated property is sold. After all, a share in an 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 prospective members that interest, it did not change the fact that they acquired such an interest.

The PR has raised other matters as potential misrepresentations, but it seems to me that they are not allegations of the Supplier saying something that was untrue. Rather, it is that Mr B wasn't told things about the way the membership worked, for example, was that the obligation to pay management fees could be passed on to his children. It seems to me that these are allegations that Mr B wasn't given all the information he needed at the Time of Sale, and I will deal with this further below.

So, while I recognise that Mr B - and the PR - have concerns about the way

in which Signature Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this Section 75 claim.

Section 75 of the CCA: the Supplier's Breach of Contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mr B says that he could not holiday where and when he wanted to. That was framed, in the Letter of Complaint, as an alleged misrepresentation. However, on my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mr B states that the availability of holidays was/is subject to demand. It also looks like he made use of his fractional points to holiday on several occasions. I accept that he may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr B any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

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

I've already explained why I'm not persuaded that Signature Club membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mr B and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material.

2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier.

3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale.

4. The inherent probabilities of the sale given its circumstances.

5. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationship between Mr B and the Lender.

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

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

They include allegations that:

1. Mr B were pressured by the Supplier into purchasing Signature Club membership at the Time of Sale.

2. The right checks weren't carried out before the Lender lent to Mr B.

3. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements.

4. The loan interest was excessive.

5. The Credit Agreement was arranged by a broker acting outside of its authorisation.

6. Mr B were not given a choice of lender by the Supplier.

However, none of these strike me as reasons why this complaint should succeed.

I acknowledge that Mr B may have felt weary after a sales process that went on for a long time. But he says little about what was said and/or done by the Supplier during his sales presentation that made him feel as if he had no choice but to purchase Signature Club membership when he simply did not want to. He was also given a 14-day cooling off period and he has not provided a credible explanation for why he did not cancel his membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr B made the decision to purchase Signature Club membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr B was actually unaffordable before also concluding that he lost out as a result and then consider whether the credit relationship with the Lender was unfair to him for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr B.

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

Similarly, the PR has not explained how, if it were true, Mr B not being offered a different lender to pay for Signature Club membership caused him any unfairness or financial loss. Mr B was aware of the interest rate set out on the face of the Credit Agreement, as well as the term of the loan and the monthly repayments, so he understood what it was he were taking out.

Further, I don't think the rate of interest was excessive, compared either to other rates available from other point-of-sale lenders or on the open market, so I can't say it would be fair or reasonable to tell the Lender to do anything because of this.

Overall, therefore, I don't think that Mr B's credit relationship with the Lender was rendered unfair to him under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR now says the credit relationship with the Lender was unfair to him. And that's the suggestion that Signature Club membership was marketed and sold to him as an investment in breach of prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Mr B's Signature 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 Signature Club membership as an investment. This is what the provision said at the Time of Sale:

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

But the PR and Mr B say that the Supplier did exactly that at the Time of Sale – saying, in summary, that he was told by the Supplier that Signature Club membership was the type of investment that would only increase in value.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

A share in the Allocated Property clearly constituted an investment as it offered Mr B the prospect of a financial return – whether, like all investments, that was more than what he first put into it. But it is important to note at this stage that the fact that Signature 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*.[1]

In other words, the Timeshare Regulations did not ban products such as the Signature Club.

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[1] The PR has argued that Signature Club membership amounted to an Unregulated Collective Investment Scheme, however this was considered and rejected in the judgment in *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).

They just regulated how such products were marketed and sold.

To conclude, therefore, that Signature Club membership was marketed or sold to Mr B 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 him as an investment, i.e. told him or led him to believe that Signature Club membership offered him the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

There is competing evidence in this complaint as to whether Signature Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, the Supplier made efforts to avoid specifically describing membership of the Signature Club as an 'investment' or quantifying to prospective purchasers, such as Mr B, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Signature Club membership as an investment. So, I accept that it's equally possible that Signature Club membership was marketed and sold to Mr B as an investment in breach of Regulation 14(3).

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

Was the credit relationship between the Lender and Mr B rendered unfair?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr B and the Lender under the Credit Agreement and related Purchase Agreement as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr B and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

But on my reading of the evidence before me, the prospect of a financial gain from Signature Club membership was not an important and motivating factor when Mr B decided to go ahead with his purchase.

I say this because:

- Mr B has provided a statement in which he sets out what he recalls of the sale of Signature membership and why he purchased it. In summary, he says:
    - He was having problems with availability when using his existing timeshare membership and was told that Signature membership would give more certainty of getting the holidays he wanted, plus a share of the profits when the Allocated Property is sold.

- He upgraded on the basis that he would have guaranteed availability in a very nice apartment and that he could still get his share of the profits when it was sold, so he considered it an investment.

While Mr B does refer to getting a share of the profits on the sale of the Allocated Property, I do not think this is clear enough for me to conclude that he means that he hoped or expected to make a profit on what he paid for Signature membership. His use of the word "profits" seems more likely to be referring to the net sale proceeds upon the sale of the Allocated Property, which is what he would get a share of. Rather than indicating he expected a profit on what he paid for Signature membership.

The main difference between Signature membership, and Fractional Property Owners Club, which was an alternative type of timeshare that also was linked to an allocated property, is that with Fractional Property Owners Club membership the owner did not have any right to stay in the allocated property. Whereas with Signature membership they were allocated a week in which they could stay in the Allocated Property, which was one of the higher specification apartments provided by the Supplier. By Mr B's own recollection, this was an important part of why he entered the purchase.

The PR has provided a handwritten call note dated 1 February 2022, which I understand was made during a call with Mr B. This is very brief but says of the purchase that Mr B *"upgraded because [the Supplier] pushed that is an investment and could make profit from selling the timeshare."* I do not think this adds much of substance. While it suggests that Mr B recalled being told it was an investment and he could make a profit, his statement is not clear in this. And given that his statement appears to have been written later by Mr B (potentially with the help or assistance of the PR), I think it is the more persuasive evidence – since it is more likely to be an accurate reflection of Mr B's recollection of what happened. And that had Mr B seen Signature membership as an investment (in that he could make a profit from it), then I would expect this to be clearly stated in the statement – especially if this was an important factor in Mr B choosing to purchase at the Time of Sale. That this is not made clear makes me think that either Mr B did not see Signature membership in those terms or that even if he did, this was not material to his decision to purchase.

So, because Mr B doesn't persuade me that his purchase was motivated by his share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision he ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Signature Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr B's decision to purchase Signature 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 he would have pressed ahead with his 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 B and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

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

The PR says that Mr B were not given sufficient information at the Time of Sale by the Supplier about membership, including about the ongoing costs of Signature Club membership and the fact that Mr B's heirs could inherit these costs.

As I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair

relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

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

As for the PR's argument that Mr B's heirs would inherit the on-going management charges, I fail to see how that could be the case or that it could have led to an unfairness that warrants a remedy.

Mr B says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 ('Johnson, Wrench and Hopcraft')*.

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship…was unfair" (see paragraph 327);

2. The failure to disclose the commission; and

3. The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

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

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

3. The characteristics of the consumer;

4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and

5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in *Johnson, Wrench and Hopcraft*, it sets out principles which apply to credit brokers other than car dealer–credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this Complaint, *Johnson, Wrench and Hopcraft* is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think *Johnson, Wrench and Hopcraft* assists Mr B in arguing that his credit relationship with the Lender was unfair to him for reasons relating to commission given the facts and circumstances of this complaint.

Based on what I've seen, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr B but as the supplier of contractual rights that he obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to him when arranging the Credit Agreement and thus a fiduciary duty.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr B, nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led Mr B into a credit agreement that cost disproportionately more than it otherwise could have.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, no payment between the Lender and the Supplier, such as a commission, was payable when the Credit Agreement was arranged at the Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not persuaded that the commercial arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr B.

END OF COPY OF PROVISIONAL FINDINGS

The PR's response to my provisional findings about an unfair relationship

My role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it. Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the provisional decision only relate to the issue of whether the credit relationship between Mr B and the Lender was unfair. In particular, the PR

has provided further comments in relation to whether the membership was sold to Mr B as an investment at the Time 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 to my provisional findings.

The PR has provided further comments and evidence which in my view relate to whether Signature Club membership was marketed or sold as an investment in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. However, as I explained in my provisional decision, while the Supplier's sales processes left open the possibility that the sales representative may have positioned Signature Club membership as an investment, it isn't necessary to make a finding on this as it is not determinative of the outcome of the complaint. I explained that Regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

The PR's comments and evidence in this respect do not persuade me that I should uphold Mr B's complaint, because they do not make me think it's any more likely that the Supplier's breach of Regulation 14(3) led Mr B to enter into the Purchase Agreement and the Credit Agreement.

The PR has provided its further thoughts as to Mr B's likely motivations for purchasing Signature Club membership. I recognise it has interpreted Mr B's evidence differently to how I have and thinks it points to him having been motivated by the prospect of a financial gain from Signature Club membership.

In my provisional decision, I explained the reasons why I didn't think the evidence was sufficiently persuasive for me to conclude that Mr B's purchase was motivated by the prospect of a financial gain (i.e., a profit). And although I have carefully considered the PR's arguments in response to this, I'm not persuaded the conclusions I reached on this point were unfair or unreasonable.

The PR has highlighted part of the Judgment in *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 and BPF v FOS*') suggesting from this that the term investment extends beyond profit or financial gain to the prospect of money back. I have taken *Shawbrook and BPF v FOS* into account when making my decision and I don't think that is what the judge intended in the paragraph the PR has highlighted. I explained in my provisional decision that the definition of investment I used was that agreed by the parties in *Shawbrook & BPF v FOS* and I see no reason to view this differently.

So, ultimately, for the above reasons, along with those I already explained in my provisional decision, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr B's purchasing decision. And for that reason, I do not think the credit relationship between Mr B and the Lender was unfair to Mr B even if the Supplier had breached Regulation 14(3).

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 January 2026.

Phillip Lai-Fang
Ombudsman