DRN-5945946

The complaint

Mr and Mrs M'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 M purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 19 September 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 3,040 fractional points at a cost of £41,310 (the 'Purchase Agreement'). But after trading in their existing fractional timeshare, they ended up paying £3,101 for upgraded membership of the Fractional Club.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs M 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 M paid for their Fractional Club membership by taking finance of £9,999 from the Lender in their joint names at 19% APR (the 'Credit Agreement'). This loan also consolidated another loan they had previously taken with another lender at 18.9% APR. Mr M settled the new loan in April 2014.

The Lender paid the Supplier a commission of £999:90.

Mr and Mrs M – using a professional representative (the 'PR') – wrote to the Lender on 13 May 2019 (the 'Letter of Complaint') to complain about:

1. 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.
2. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of section 140A of the CCA.

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

Mr and Mrs M say that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. told them that Fractional Club membership had a guaranteed end date when that was not true;
2. told them that they were buying an interest in a specific piece of "real property" when that was not true;
3. told them that Fractional Club membership was an investment when that was not true because (according to the PR) it cannot be an investment because regulations prohibit selling or marketing a timeshare as an investment;

4. told them that the Supplier's holiday resorts were exclusive to its members when that was not true;
5. told them they had to consolidate their existing loan in order to buy fractional points when that was not true;
6. told them that buying additional fractional points would result in additional savings when that was not true;
7. told them that buying a fractional timeshare was their only way to get out of their existing timeshare when that was not true.

Mr and Mrs M 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 M.

(2) 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 M 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 in breach of regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').
2. The contractual terms setting out the duration of their Fractional Club membership were unfair contract terms under the Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR') – due to, in particular, the contract's duration (because it allegedly had no guaranteed end date) and the liability to pay annual management charges.
3. They were pressured into purchasing Fractional Club membership by the Supplier.
4. The Supplier's sales presentation at the Time of Sale included misleading actions and/or misleading omissions under the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations') as well as a prohibited practice under Schedule 1 of those Regulations.
5. The Supplier failed to provide sufficient information in relation to the Fractional Club's ongoing costs, in particular the fact that the management charges would increase over time.
6. There were too many documents given to Mr and Mrs M at the Time of Sale, these were not written in clear language (in breach of the UTCCR), and Mr and Mrs M had no opportunity to familiarise themselves with them.

The Lender dealt with Mr and Mrs M's concerns as a complaint and issued its final response letter on 12 December 2019, rejecting it on every ground.

Mr and Mrs M then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on the ground that there had been a breach of regulation 14(3) of the Timeshare Regulations.

Mr and Mrs M disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. I issued my provisional findings to the parties

on 23 September 2025, which read as follows.[1]

What I've provisionally 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.

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.

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

As both sides may already know, a claim against the Lender under section 75 essentially mirrors the claim Mr and Mrs M could make against the Supplier. Certain conditions must be met if this protection is engaged, which are set out in the CCA. One of these is that the cash price of the services purchased must not exceed £30,000. As I've said, the price was £41,310, which means that section 75 did not apply. 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.

However I can still consider the alleged misrepresentations in the context of section 140A instead.

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

Mr and Mrs M 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 Time of Sale that they have concerns about. It is those concerns that I explore here.

I have considered the entirety of the credit relationship between Mr and Mrs M 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
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 M and the Lender.

[1] That decision included an Appendix, which set out in detail the legal and regulatory context that I think is relevant to this complaint, and which formed part of my provisional decision. I have omitted it from this decision, because it is familiar to the parties. All case citations are given there.

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

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

They include the allegation that the Supplier misled Mr and Mrs M and carried on unfair commercial practices which were prohibited under the CPUT Regulations. These were (i) creating the impression that Mr and Mrs M could not leave the premises until a contract was signed, and (ii) the misleading actions or omissions I have summarised above in the part about section 75.

Pressured sale and the consolidation of the existing loan

Mr and Mrs M say that they were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale. I acknowledge that they may have felt weary after a sales process that went on for a long time (about three hours). But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they could not leave or that 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 simply cancel their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs M made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

I think the 14-day cooling-off period is also relevant to Mr and Mrs M's complaint that they were sold a consolidating loan without the opportunity to decline it. It was open to them to cancel the loan agreement within that period if they wished, and then to either fund their purchase with a cheaper loan from someone else or cancel their purchase too. But they didn't do that, and I think it is easy to understand why they didn't, because comparing the loans shows that the APR of the consolidating loan was only 0.1% higher than the APR on the consolidated loan, which is not significantly more expensive and so is unlikely to have seemed to Mr and Mrs M to have been worth going to the trouble. So I don't think that is enough to find that the resulting credit relationship was unfair.

Misleading actions and omissions

As I've said already, misleading actions and omissions are prohibited by the CPUT Regulations, and can cause a credit relationship to be unfair.

It is true that the Fractional Club membership did not have a guaranteed end date, in that it is not possible to guarantee when a property will actually be sold. But it did have a prescribed date on which the Allocated Property would be put up for sale after 19 years (and this did not require the unanimous consent of all the owners, as alleged – rather, under Rule 9.1 of the Project Rules their unanimous consent was only necessary to *postpone* the sale). So I don't think that Mr and Mrs M would have been misled into thinking that the sale of the property would complete on a specific day, only that the property would be put on the market on that day – which was true.

The PR says that Mr and Mrs M 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. Their 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 argues that the Fractional Club membership was not an investment, and that it was misleading to describe it as one. But the fact that the Timeshare Regulations prohibit selling a timeshare as an investment does not mean that is not an investment. It certainly is an investment, and so it was not misleading to describe it as one (if it was so described; I shall return to that question later, when I consider whether there was a breach of the Timeshare Regulations).

I've seen evidence that the Supplier's holiday resorts were not exclusive to its members. But I've not seen evidence (other than Mr and Mrs M's witness statement) that Mr and Mrs M were told that they were exclusive and were not open to the public. The Supplier says that its resorts are not exclusive to members, although club members do receive benefits which are exclusive to members. As Mr and Mrs M wrote their witness statement more than five years later, it's possible that they have half-remembered being told about exclusive benefits and now recall it differently. I'm open to receiving more evidence on this matter, but for the moment I am not persuaded that the evidence I have now is enough to find that the resorts were misrepresented as only being available to be booked by members.

Mr and Mrs M say that they were told that buying additional fractional points would result in additional savings. However, I have seen no evidence that this was untrue, nor have Mr and Mrs M or the PR explained why they think it is untrue. They may wish to address this point in their response to this provisional decision.

They also say that the Supplier failed to tell them that buying a fractional timeshare was not their only way to get out of the (non-fractional) timeshare they had bought in 2008. This was an appealing prospect to them because they were dissatisfied with it. Their understanding was that their original timeshare membership was in perpetuity, but they could replace it with the fractional points which would only last for 19 years, so they saw this as a viable exit plan. However, Mr and Mrs M say all this about their original purchase of fractional points in June 2013, which was financed by a loan from another lender, which means that Shawbrook is not responsible for this. And when in September 2013 they made the purchase which was financed by Shawbrook, they no longer had a timeshare with an indefinite commitment.

I'm not persuaded, therefore, that Mr and Mrs M's credit relationship with the Lender was rendered unfair to them under section 140A for any of the reasons above. But there are two other reasons why they say their credit relationship with the Lender was unfair to them. And those are (i) the suggestion that Fractional Club membership was marketed and sold to them as an investment in breach of the prohibition against selling timeshares in that way, and (ii) the lack of clarity around the management fees. I will deal with each of these issues next.

<u>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?</u>

The Lender does not dispute, and I am satisfied, that Mr and Mrs M'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*,[2] 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 M'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. (For this reason, I am not satisfied that calling it an investment – if the salesman did call it that – would be a misrepresentation.)

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs M as an investment in breach of regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

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

On the one hand, it is clear 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 M, 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 M as an investment. So, it's *possible* that Fractional Club membership wasn't marketed or sold to them as an investment in breach of regulation 14(3).

On the other hand, 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. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr and Mrs M as an investment in breach of regulation 14(3).

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

[2] Please see the Appendix for full case citations.

Was the credit relationship between the Lender and Mr and Mrs M rendered unfair to them?

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.

And in light of what the courts had to say in *Carney* and *Kerrigan,* 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 M and the Lender that was unfair to them and warranted relief as a result, then an important consideration is whether any breach of regulation 14(3) lead them to enter into the Purchase Agreement and the Credit Agreement.

But there was no suggestion in Mr and Mrs M's initial recollections of the sales process at the Time of Sale that the Supplier led them to believe that the Fractional Club membership was an investment from which they would make a financial gain, nor was there any indication that they were induced into the purchase on that basis. Rather, what they said was this:

"The [Supplier's] salesperson explained that if we were to purchase a second Fractional Ownership it would be cheaper for us with just one bill to pay, that would be the maintenance and insurance bill only. The reason for us to go into this purchase was it would be cheaper for us. In the first Fraction we paid for maintenance and also for points used. Our understanding … was that the second Fraction was less expensive."

They do not mention the timeshare having been sold to them as an investment in this paragraph (32). (Although they do mention that happening in some other paragraphs (24, 25 and 38), those all seem to be about the earlier sale which was financed by another lender, for which Shawbrook would therefore not be responsible.)

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 M'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 M 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 M when they purchased membership of the Fractional Club at the Time of Sale. But they and the PR say that the Supplier failed to provide them with all of the information they needed to make an informed decision – specifically, in relation to the annual management fees. As I've said, they say that the Supplier failed to properly inform them about the charges and that these would increase over time, above the inflation rate. And there were too many documents given to Mr and Mrs M at the Time of Sale; these were not written in clear language (in contravention of regulation 7 of the UTCCR); and Mr and Mrs M had no opportunity to familiarise themselves with them. At the Time of Sale, regulation 7 required the Purchase Agreement to be *"expressed in plain, intelligible language."*

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 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 if 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 have been 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. 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 that the relevant documents which describe how the management charges are determined (the Project Rules and the Management Agreement) are somewhat lengthy and are not very clear, and that a consumer might find them off-putting. However, I also note that Mr and Mrs M had owned timeshares with the Supplier since 2008, and so they had already been paying management fees for five years. They were therefore aware that the fees would increase above inflation by the Time of Sale in 2013. And I note that Mr and Mrs M say very little about management charges in their eight-page witness statement, except in connection with the 2008 sale. So I am not persuaded that being presented with clearer or simpler terms about the charges would have changed their decision to purchase in 2013, and for that reason I don't think that the credit relationship was unfair.

Was there an unfair contract term?

The PR also says that the contractual terms governing the ongoing costs of Fractional Club membership and the consequences of not meeting those costs were unfair contract terms under the UTCCR.

The Purchase Agreement incorporates the Project Rules. Rule 5.5 of the Project Rules imposes draconian consequences for non-payment of management charges, including the permanent loss of the Allocated Property without compensation if the charges are in arrears for more than 30 days. This is certainly capable of being an unfair contract term under the UTCCR, which prohibit *"requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation"*. In the case of *Link Financial,* the judge held that it was disproportionate to have a contractual term saying that fractional membership can be ended by the Supplier for non-payment of fees – however small the amount outstanding may be – without refunding any of what he paid for his purchase, because then the Supplier would not only receive a windfall (the purchase price paid for the timeshare) but can also re-sell the same allocated property to another consumer. The judge described this as *"wholly disproportionate and penal."*

I agree with that, but before I can accept that this means that the relationship between the creditor and the debtor thereby became unfair, as the judge went on to find in *Link Financial,* I think I have to take into account how the clause has actually operated in practice in relation to Mr and Mrs M's agreement, not just how it could potentially operate hypothetically. The judge in *Link Financial* said as much at paragraph [46] of his judgement:

"The fact that clause D can be regarded in the abstract as an unfair term is not however the end of the enquiry for the purposes of s.140A of the Act. In considering the fairness of the relationship, it is necessary to consider all other relevant matters, and (amongst other things) these necessarily include how the clause has been operated in practice."

In *Link Financial,* the clause had been used to terminate the defendant's timeshare. But Mr and Mrs M's membership has not been terminated, and they have not stopped paying the

management fees. Perhaps the *potential* for the foreclosure clause to be implemented if they ever stop paying their fees (which they would like to do because they are no longer taking the holidays) is causing them concern. Nevertheless, they would still be legally obliged to pay those fees whether the foreclosure clause was there or not, and as that clause has not been invoked, I do not think that its mere existence, by itself, amounts to grounds to find that an unfair credit relationship existed.[3]

Commission

I note that one of the PR's other concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. The Supreme Court's recent judgment in J*ohnson 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. So, once the implications of that judgment become clear, I will finalise my findings on this complaint.

Section 140A: Conclusion

So given the facts and circumstances of this complaint, I am not persuaded that the Supplier's alleged breaches of the CPUT Regulations, the Timeshare Regulations and the UTCCR are likely to have prejudiced Mr and Mrs M'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.

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 M was unfair to them because of an information failing by the Supplier, I'm not persuaded that it was.

Conclusion

I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs M's section 75 claim, and if I put the issue of commission to one side for the time being, I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

My addendum provisional decision

At the time of my provisional decision I deferred my conclusions on the matter of commission disclosure in order to review that issue further. I've since written to the parties setting out my thoughts on why I wasn't persuaded to uphold this aspect of the complaint.

Applying the principles and factors set out in the Supreme Court judgment[4] handed down on 1 August 2025, I found nothing to suggest to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr and Mrs M. Nor did I see anything that persuaded me that the commission arrangements

[3] Even if I took a different view about that, the remedy would not be to unwind the purchase agreements and the credit agreements. Regulation 8 of the UTCCR says that an unfair term is not binding, but the rest of the contract shall continue to be binding.

[4] *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ("*Hopcraft, Johnson and Wrench"*)

between them gave the Supplier a choice over the interest rate which led Mr and Mrs M into a credit agreement that cost disproportionately more than it otherwise could have.

Further, the flat rate and amount of commission paid was such that it gave me no reason to think that any failure to disclose it to Mr and Mrs M had a material impact on their decision to enter into the Credit Agreement. At £999:90, it was only 10% of the amount borrowed and even less than that (5.43%) as a proportion of the charge for credit. That didn't strike me as disproportionate; nor were the surrounding circumstances otherwise capable of rendering unfair the credit relationship between the Lender and Mr and Mrs M such that the Lender needed to take any action in redress.

I didn't find any of the other arguments put forward demonstrated that the credit agreement between Mr and Mrs M and the Lender was unfair to them under section 140A of the CCA. Absent any other reason why it would be fair or reasonable to direct the Lender to compensate Mr and Mrs M, I said I didn't propose to uphold the complaint.

Responses to my provisional findings

The Lender accepted my provisional decision. The PR didn't accept the proposed outcome. It made further submissions in support of Mr and Mrs M's position. Having received and reviewed these, I'm now proceeding with my final decision.

In doing so, I'm conscious that the PR has made a series of assertions surrounding the provision of information relating to commission arrangements. These include, among other things, expressing doubt that the Lender has provided key information, requesting that the information we have received be shared with it in full, and asking that we do not proceed with a decision before this is done and it has had an opportunity to make further submissions.

For reasons I will explain in the course of this decision, I've concluded that it's appropriate for me to proceed with my determination, the PR's submissions notwithstanding.

The legal and regulatory context

The legal and regulatory context that I think is relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in previous correspondence with the parties. So there's no need for me to set this out again in detail here. I simply remind the parties that our rules[5] say that in considering what is fair and reasonable in all the circumstances of the complaint, I will 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.

What I've decided – and why

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

After considering the case afresh and having regard for what's been said in response to my provisional decision and in my subsequent correspondence, I find it offers no persuasive reason to depart from the conclusions I've previously set out. I'll explain why.

[5] Financial Conduct Authority ("FCA") Handbook – DISP 3.6.4R ("R" denotes a rule).

The PR originally raised various points of complaint, such as those giving rise to Mr and Mrs M's section 75 claim, which I addressed in my provisional decision. In its response, it hasn't made any further comments in relation to most of its original points, or said anything that leads me to think it disagrees with my provisional conclusions in relation to those points. So I'll focus here on the points the PR *has* made in response.

The PR's response to my provisional decision relates mainly to the issue of whether the credit relationship between Mr and Mrs M and the Lender was unfair *per* section 140A of the CCA. In particular, the PR has provided more comment in relation to whether the membership was sold to Mr and Mrs M as an investment at the Time of Sale. It has also made further submissions in support of its position that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship between the Lender and Mr and Mrs M. And it has argued that the relationship was also unfair as a result of the Lender failing to carry out proper affordability checks, and lending to Mr and Mrs M at ages where they would be elderly and retired before the end of the loan term.

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

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

The PR has questioned whether my provisional conclusions run contrary to precedent decisions issued by my ombudsman colleagues and the judgment handed down in *Shawbrook and BPF v FOS*. I don't believe they do. However, for the avoidance of doubt, other decisions issued by other ombudsmen do not have a precedent effect like some court judgments might, and each ombudsman must determine each case on its own specific facts. Further, the judgment referred to did not make a blanket finding that all products of the type Mr and Mrs M purchased were mis-sold in the way the PR appears to be suggesting.

I remind the PR that in my provisional decision I accepted the possibility that Fractional Club membership was marketed and/or sold to Mr and Mrs M as an investment, in breach of regulation 14(3). I went on to explain that relevant case law[6] indicates that in considering the question of relief for any resultant unfairness in the credit relationship, I needed to take into account any material impact of such a breach on Mr and Mrs M's decision whether to enter into the Purchase and Credit Agreements. It doesn't strike me that doing so flies in the face of either *Shawbrook and BPF v FOS*[7] or previous decisions the PR has mentioned.

While the PR has referred me to Mr and Mrs M's recollections and the Supplier's training materials, I have already considered these and what was said. And I set out in my provisional decision the reasons why I didn't find that evidence sufficiently persuasive that Mr and Mrs M's purchase decision would have been any different, given the other motivational factors they had described. Having re-examined Mr and Mrs M's statement that remains my view, for the reasons previously given. Furthermore, in a new statement which was provided in response to my provisional decision, they said *"We agreed to it* [i.e. the sale] *because of the extra points"*.

So as I said before, whether or not the Supplier marketed or sold Fractional Club membership as an investment in breach of regulation 14(3), I'm not persuaded Mr and Mrs M's decision to make the purchase was materially impacted by the prospect of a financial gain.

The PR has quoted a passage from paragraph 75 of the judgement of the High Court in *Shawbrook Bank Limited v Financial Ombudsman Service* [2023] EWHC 1069 (Admin),

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[6] *Carney* and *Kerrigan*.
[7] Indeed, paragraph 185 of *Shawbrook and BPF v FOS* appears to endorse this approach.

which the PR argues demonstrates that the investment opportunity does not have to be the main reason for a consumer's decision to purchase, just one of the reasons. However, having read that judgement, and in particular paragraphs 71 to 76, I think the PR has taken the quoted passage out of context and has misunderstood it. The passage is not what the judge in that case thought; it is the judge's summary of the losing party's lawyer's argument, which the judge rejected.

It follows that I find the credit relationship between Mr and Mrs M and the Lender was not rendered unfair to them for this reason.

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

The PR has asked for the documents the lender has provided to show the commission arrangements. As the PR will be aware, under DISP 3.5.9R I may, where I consider it appropriate, accept information in confidence (so that only an edited version, summary or description is disclosed to the other party). I'm satisfied that agreements between the Lender and the Supplier are commercially sensitive and that the summary information on commission arrangements we've already shared with the PR is appropriate in this case.

While I appreciate the PR would like to have full disclosure of all of the documents and information the Lender has provided, our rules do not require me to provide this when dealing with a complaint.

As I've noted, the PR has disagreed with my provisional conclusions on whether the Lender should pay redress because of an unfair credit relationship arising in connection with commission arrangements between the Lender and the Supplier. The PR says, in summary, that when the overall circumstances of those arrangements are considered in the round, the credit relationship was plainly unfair. In support of this position the PR has expressed, among other things, that:

- The provisional decision doesn't properly apply the Supreme Court's judgment in *Hopcraft, Johnson and Wrench,* which concluded a range of factors informed whether a credit relationship between a consumer and a lender was unfair
- A conflict of interest existed on the part of the Supplier, who provided neither independent nor competent explanation of the credit
- Failure to disclose payment of commission – irrespective of the size of any payment - was a regulatory breach that goes to the heart of fairness

I appreciate the time the PR has taken to put together its submissions on behalf of Mr and Mrs M. But I don't find what it has said offers persuasive grounds for me to reach a different conclusion on this issue.

I've previously set out my thoughts on any impact the Supreme Court's conclusions in *Hopcraft, Johnson and Wrench* has on Mr and Mrs M's arguments that their credit relationship with the Lender was unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

The PR's response doesn't offer anything that leads me to think that, for the most part, any of the factors it has referenced were in fact at play in Mr and Mrs M's case. It hasn't, for example, provided evidence to show the existence of commercial or contractual ties that were concealed from Mr and Mrs M, any persuasive reasons to conclude that the Supplier's role was that of advisor to Mr and Mrs M, or to show that any other conflict of interest arose from the roles the Supplier did perform.

For such a claim to be successful would require more than the bare assertions that have been made in this case.[8] I'm not persuaded that it is sufficient, as the PR seems to contend, simply to suggest unsubstantiated allegations of fact and require that the Lender disprove them else the credit relationship be deemed unfair.

I'm satisfied the Lender has provided sufficient information in response to my enquiries to enable me to reach a conclusion about its commission arrangements with the Supplier. I've seen nothing in this case that leads me to think what the Lender has said about the commission arrangements is inaccurate. So there's no reason for me to reach a different finding over those commission arrangements.

In its correspondence the PR has emphasised the regulatory breaches connected with a failure to disclose commission payment. I have already set out why in my view this doesn't automatically lead to an unfair credit relationship for which the Lender needs to offer redress. While I've considered all that the PR has submitted, I remain of that view.

The rate of commission paid was a flat rate; that is to say, it was not at the discretion of the Supplier, or based on any variable within the salesperson's control, for example. It was just 10% of the sum borrowed. So it did not create the kind of incentive that might lead to unfairness arising.

Other causes of unfairness

I still haven't seen anything to persuade me that the right checks weren't carried out by the Lender, or that the loan was unaffordable. And since the loan was settled in April 2014, I think that Mr M knew that he could repay the loan before the end of the contractual loan term.

Mr and Mrs M also complain that their children would inherit their liability to pay annual maintenance charges after their death. But it certainly was not the case that their children (as opposed to Mr and Mrs M's estates) would inherit their liability in their own right. The Purchase Agreement is a personal contract, which will expire on their deaths (if it is still subsisting at that time).[9] Such debts cannot be inherited by their children, nor can their children be compelled to become timeshare members or owners.

Section 140A conclusion

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I remain unpersuaded that the credit relationship between Mr and Mrs M and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them such that it warrants the Lender offering any redress.

Commission: the alternative grounds of complaint

In my previous correspondence I mentioned that some of the grounds for complaint about the fairness or otherwise of the credit relationship could also constitute separate and freestanding complaints. I'll reiterate my findings here.

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[8] In *Wilson v Clydesdale Financial Services Ltd t/a Barclays Partner Finance* [2021] (unreported), the court took the view that the burden is on the debtor to prove on the balance of probabilities *the facts* that purportedly create the unfairness. It is then that the lender's burden of proof that requires it to prove *the relationship was not unfair* kicks in. While not amounting to legal precedent, the similarity of the subject matter of that case suggests to me that it is reasonable to take the same approach when considering the facts in this case.

[9] See *Chitty on Contracts* (35th edition), paragraph 29-030; and see also paragraph 24-009.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr and Mrs M (that is, secretly). The second relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

For the reasons I set out previously, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr and Mrs M a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to them. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint. For the reasons I have also previously set out, I think they would still have taken out the loan to fund their purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Conclusion

After careful reconsideration of the facts and circumstances of this complaint, I adopt my provisional conclusions as part of my final decision. For the reasons I've given above and in my earlier correspondence I've mentioned, I don't think the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs M's section 75 claim. And I'm not persuaded that the Lender was party to a credit relationship with Mr and Mrs M that was unfair to them for the purposes of section 140A of the CCA. Having taken everything into account, I see no other reason why it would be fair or reasonable for me to direct the Lender to compensate Mr and Mrs M.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 3 February 2026. But this final decision brings our service's involvement in this complaint to an end.
Richard Wood
Ombudsman