

The complaint

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

What happened

Mr A and Miss W purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 20 October 2016 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,040 fractional points at a cost of £19,925 (the 'Purchase Agreement'). But after trading in their existing trial membership, they ended up paying £15,930 for membership of the Fractional Club.

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

Mr A and Miss W paid for their Fractional Club membership by paying a £500 deposit and taking finance for the remaining amount of £15,430 from the Lender in both of their names (the 'Credit Agreement').

Mr A and Miss W – using a professional representative (the 'PR') – wrote to the Lender on 12 July 2023 (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) Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

Mr A and Miss W say that the Supplier made pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. told them the membership would ensure that their holiday accommodation would be secured for the term of the contract, as they could book from the many options available.
2. told them that Fractional Club membership was an "investment" when that was not true.

Mr A and Miss W say that they have a claim against the Supplier in respect of one or both 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 A and Miss W.

(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 A and Miss W say that the credit relationship between them and the Lender was unfair to them under Section 140A of the CCA. In summary, they include the following:

1. Fractional Club membership was marketed and sold to them as an investment 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 obligation to pay annual management charges for the duration of their membership and the terms setting out that the membership would be forfeit, with the Supplier able to retain all money paid towards it so far, if Mr A and Ms W failed to make a payment due under the agreement, were unfair contract terms under the Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR')¹.
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 prohibited practices under Schedule 1 of those Regulations.
5. The Supplier failed to provide sufficient information to allow them to make an informed decision, in particular, in relation to the Fractional Club's ongoing costs.

The Lender dealt with Mr A and Miss W's concerns as a complaint and issued its final response letter on 1 September 2023, rejecting it on every ground.

Mr A and Miss W 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 its merits.

The PR wrote to the Lender again on 30 January 2025 to expand further on the complaint made. Most of this letter simply represents an attempt to refine the complaint at a late stage, but I can see the following new points were made:

- The Supplier made another misrepresentation at the Time of Sale as they told Mr A and Miss W that the membership offers a guaranteed end date when this is not true, as the Allocated Property won't be sold when the Supplier said it would.
- The Lender paid the Supplier commission, but this was not disclosed to Mr A and Miss W.

The Lender responded to these points in a letter dated 7 February 2025, rejecting them.

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

I issued a provisional decision where I made the following provisional findings (which form part of this final decision):

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

¹ Here, the PR referred to the UTCCR. But, based on the date of sale, it is the Consumer Rights Act 2015 (the 'CRA') which applies here.

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers (“debtors”) a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants (“suppliers”) in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mr A and Miss W could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction.

Further, creditors can reasonably reject Section 75 claims that they’re first informed about after the claim has become time-barred under the Limitation Act 1980 (the ‘LA’). The reason being, that it wouldn’t be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court.

Having considered everything, I think Mr A and Miss W’s claim for misrepresentation is likely to have been made too late under the relevant provisions of the LA, which means it would have been fair for the Lender to have turned down their Section 75 claim for this reason.

A claim under Section 75 is a ‘like’ claim against the creditor. A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued, as per Section 2 of the LA.

But a claim like this one under Section 75 is also “an action to recover any sum by virtue of any enactment” under Section 9 of the LA. The limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued for the claim was the Time of Sale, which was 20 October 2016. I say this because Mr A and Miss W entered into the membership at that time based on the alleged misrepresentations by the Supplier, which Mr A and Miss W say they relied on. And, as the loan from the Lender was used to finance this membership, it was when Mr A and Miss W entered into the Credit Agreement, on 20 October 2016, that they suffered a loss.

Mr A and Miss W first notified the Lender of their Section 75 claim on 12 July 2023. Since this was more than six years after the Time of Sale, I don’t think it was unfair or unreasonable of the Lender to reject Mr A and Miss W’s concerns about the Supplier’s alleged misrepresentations at the Time of Sale.

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

Mr A and Miss W 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 A and Miss W and the Lender along with all of the circumstances of the complaint and I do not think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

- 1. The Supplier’s sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale;*

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; 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 relationship between Mr A and Miss W and the Lender.

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

Mr A and Miss W'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 A and Miss W and carried on unfair commercial practices which were prohibited under the CPUT Regulations. But given the limited evidence in this complaint, I am not persuaded that anything done or not done by the Supplier was prohibited under the CPUT Regulations.

Mr A and Miss W 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. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase 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. And with all of that being the case, there is insufficient evidence to demonstrate that Mr A and Miss W made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

The PR also said that commission was paid to the Supplier by the Lender at the Time of Sale and because this was not disclosed to Mr A and Miss W this made the credit relationship unfair. But the PR has not provided any evidence that this was the case, and the Lender has confirmed to this Service that they did not pay any commission to the Supplier.

The PR also says that the contractual terms relating to the annual management charges Mr A and Miss W would have to pay in relation to their membership, and those which set out that the membership would be forfeit in the event that they failed to make a payment due under the agreement, were unfair. On my reading of what's been said here, this appears to simply be a generic allegation from the PR, rather than anything specific to Mr A and Miss W. What's more, the PR has failed to set out how exactly this term has caused an unfairness in their particular case.

Nevertheless, one of the main aims of the Timeshare Regulations and the CRA was to enable consumers to understand the financial implications of their purchase so that they were/are put in the position to make an informed decision. And if a supplier's disclosure and/or the terms of a contract did not recognise and reflect that aim, and the consumer ultimately lost out or almost certainly stands to lose out from having entered into a contract whose financial implications they didn't fully understand at the time of contracting, that may lead to the Timeshare Regulations and the CRA being breached, and, potentially the credit agreement being found to be unfair under Section 140A of the CCA.

However, the Supreme Court made it clear in Plevin² that it does not automatically follow

² See Appendix.

that regulatory breaches create unfairness for the purposes of Section 140A of the CCA. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

So, in order to conclude that a term in the Purchase Agreement rendered the credit relationship between Mr A and Miss W and the Lender unfair to them, I'd have to see that the term was unfair under the CRA, and that the term was actually operated against Mr A and Miss W in practice.

*In other words, it's important to consider what real-world consequences, in terms of harm or prejudice to Mr A and Miss W, have flowed from such a term, because those consequences are relevant to an assessment of unfairness under Section 140A. For example, the judge in *Link Financial v Wilson* [2014] EWHC 252 (Ch) attached importance to the question of how an unfair term had been operated in practice: see [46].*

As a result, I don't think the mere presence of a contractual term that was/is potentially unfair is likely to lead to an unfair credit relationship unless it had been applied in practice.

Having considered everything that has been submitted, it seems unlikely to me that the contract term(s) cited by Mr A and Miss W have led to any unfairness in the credit relationship between them and the Lender for the purposes of Section 140A of the CCA. And I say this because I cannot see that the relevant terms in the Purchase Agreement have actually been operated against Mr A and Miss W, let alone unfairly. So, I can't see that this caused an unfairness in the credit relationship which requires a remedy.

Related to this point, the PR has also said the Supplier failed to provide sufficient information in relation to the ongoing costs associated with the membership and says there were various regulatory breaches in this regard. Again, this appears to be generic allegations from the PR, rather than anything specific to Mr A and Miss W's particular sale.

So overall, while I've considered the point the PR has made here, I'm not persuaded that the Supplier's alleged breaches of the Timeshare Regulations and the RDO code are likely to have prejudiced Mr A and Miss W's purchasing decision at the Time of Sale and rendered their credit relationship with the Lender unfair to them as a result. I say this because I simply haven't been provided with any evidence to support the allegations and so, I can't see how the information the PR has said was missing was material to Mr A and Miss W's decision to purchase in this particular case. For example, Mr A and Miss W's testimony doesn't reflect the PR's allegations here. I'm also aware that consumers generally received an Information Statement at the Time of Sale, which explained information about the annual management fees, for example. And in any event, I have seen no evidence that would lead me to think that had the Supplier provided Mr A and Miss W with the information the PR says was lacking, they would not have made their purchase of the Fractional Club membership. So, in my view, the breaches identified were, if found, wholly technical in nature and were immaterial to Mr A and Miss W's decision to purchase Fractional Club membership.

I'm not persuaded, therefore, that Mr A and Miss W's credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why they say their credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way. This was also the reason the Investigator in this case originally upheld the complaint.

Was Fractional Club membership marketed and sold at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations?

The Lender does not dispute, and I am satisfied, that Mr A and Miss W's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

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

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

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

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

Mr A and Miss W share in the Allocated Property clearly, in my view, constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

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

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

There is 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 A and Miss W, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr A and Miss W 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 A and Miss W as an investment in breach of Regulation 14(3).

In addition to this, the PR provided a witness statement when the complaint was first referred to our Service, which I've considered. This was not signed or dated but the PR has provided evidence that they received the statement from Miss W on 24 September 2023.

*When considering how much weight I can place on Mr A and Miss W's statement, I am assisted by the judgement in the case of *Smith v Secretary of State for Transport* [2020] EWHC 1954 (QB).*

At paragraph 40 of the judgment, Mrs Justice Thornton helpfully summarised the case law on how a court should approach the assessment of oral evidence. Although in this case I have not heard direct oral evidence, I think this does set out a useful way to look at the evidence Mr A and Miss W have provided. Paragraph 40 reads as follows:

*"At the start of the hearing, I raised with Counsel the issue of how the Court should assess his oral evidence in light of his communication difficulties. Overnight, Counsel agreed a helpful note setting out relevant case law, in particular the commercial case of *Gestmin SPGS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) (Leggatt J as he then was at paragraphs 16-22) placed in context by the Court of Appeal in *Kogan v Martin* [2019] EWCA Civ 1645 (per Floyd LJ at paragraphs 88-89). In the context of language difficulties, Counsel pointed me to the observations of Stuart-Smith J in *Arroyo v Equion Energia Ltd (formerly BP Exploration Co (Colombia) Ltd)* [2016] EWHC 1699 (TCC) (paragraphs 250-251). Counsel were agreed that I should approach Mr Smith's evidence with the following in mind:*

- a. In assessing oral evidence based on recollection of events which occurred many years ago, the Court must be alive to the unreliability of human memory. Research has shown that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts (*Gestin and Kogan*).*
- b. A proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact based upon all the evidence. Heuristics or mental short cuts are no substitute for this essential judicial function. In particular, where a party's sworn evidence is disbelieved, the court must say why that is; it cannot simply ignore the evidence (*Kogan*).*
- c. The task of the Court is always to go on looking for a kernel of truth even if a witness is in some respects unreliable (*Arroyo*).*
- d. Exaggeration or even fabrication of parts of a witness' testimony does not exclude the possibility that there is a hard core of acceptable evidence within the body of the testimony (*Arroyo*).*
- e. The mere fact that there are inconsistencies or unreliability in parts of a witness' evidence is normal in the Court's experience, which must be taken into account when assessing the evidence as a whole and whether some parts can be accepted as reliable (*Arroyo*).*
- f. Wading through a mass of evidence, much of it usually uncorroborated and often coming from witnesses who, for whatever reasons, may be neither reliable nor even*

truthful, the difficulty of discerning where the truth actually lies, what findings he can properly make, is often one of almost excruciating difficulty yet it is a task which judges are paid to perform to the best of their ability (Arroyo, citing Re A (a child) [2011] EWCA Civ 12 at para 20)."

From this, and from my own experience, I find that inconsistencies in evidence are a normal part of someone trying to remember what happened in the past. So, I'm not surprised that there are some inconsistencies between what Mr A and Miss W said happened and what other evidence shows. The question to consider, therefore, is whether there is a core of acceptable evidence from Mr A and Miss W that the inconsistencies have little to no bearing on whether their testimony can be relied on, or whether such inconsistencies are fundamental enough to undermine, if not contradict, what they say about what the Supplier said and did to market and sell Fractional Club membership as an investment.

I have also considered when the testimony was completed. This was after the ruling in Shawbrook & BPF v FOS³, so I have considered whether there is a risk that the testimony may have been, even subconsciously, influenced by that.

And having thought about all of these things, I do not feel I am able to place much weight on what Mr A and Miss W have said in their testimony. I'll explain.

As I've said, inconsistencies in the testimony are unsurprising, but in this case, I do feel that they are significant enough that they undermine what Mr A and Miss W have said. For example, they've said that following their return home after the sale, Miss W enquired with the Supplier about cancelling or selling their timeshare and were told that wasn't an option. But, the Supplier has no record of such a conversation. They've confirmed that they did contact Miss W on 27 October 2016, but the notes from that conversation show she confirmed she was happy with the purchase and asked when they could start to book their first holidays.

Miss W then goes on to describe what happened following the sale and describes the first holiday they took as members to Turkey. She describes in some detail what they say happened during a sales presentation they attended while on that holiday, where they did not make a purchase and say they had an unpleasant experience. But this is contradicted by information from the Supplier. For example, the Supplier has said the holiday being referred to by Miss W was in fact the fourth holiday they had taken, not their first as members. And that following this, they had referred a friend/family member to the Supplier for a promotional holiday where they would be required to attend a similar presentation. I find it hard to understand why they would have referred someone else if they had gone through such an unpleasant experience themselves. This all calls into question what they've described about their experience on this holiday.

For these reasons, while I am not calling in to question the truthfulness of what Mr A and Miss W have set out, I think there is a significant risk that they are mistaken in what they remember, and their memories may have been subconsciously influenced by external matters prior to their testimony being drafted.

So, overall, taking into account that it was written after the judgement in Shawbrook & BPF v FOS and again, while I am not doubting Mr A and Miss W's truthfulness here, I have sufficient doubts as to the reliability of their memories, as set out in the testimony, to mean I do not feel I can place much, if any, weight on it.

³ See Appendix.

So, I do not think the testimony provided helps me in my considerations about whether there was a breach of Regulation 14(3) of the Timeshare Regulations at the Time of Sale.

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.

Was the credit relationship between the Lender and Mr A and Miss W 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 A and Miss W and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

As I've already said, although Mr A and Miss W have suggested in their testimony that the Supplier led them to believe that the Fractional Club membership was an investment from which they would make a financial gain, I don't feel I can place much, if any, weight on this in my determination of this case. Nor can I do so when considering whether any such breach by the Supplier likely induced them into the purchase.

But even if that wasn't the case, I also don't think their testimony supports that the Supplier's alleged breach induced them into the purchase.

I say this because after describing in their testimony being told by the Supplier at the Time of Sale that the membership was an investment, Mr A and Miss W say they asked to be taken back to their accommodation i.e. they were not interested in purchasing after allegedly being told this. And, that they only then made the purchase in order to leave the presentation.

They also go on to outline why they're unhappy with the membership now and made the following comments:

"In addition it was impossible to get booked and it appeared this wasn't a members club nor an investment in property.

You could book these resorts through on-line travel companies such as On The Beach etc and have all-inclusive offers you couldn't even get as members. These companies appeared to have priority when it came to booking because the dates I requested were never available. However, I could book with an on-line travel company."

Further, I also return here to the fact that Mr A and Miss W made a purchase of a trial membership from the Supplier prior to their Fractional Club purchase. Similarly, the Lender has provided the Supplier's sales note made at the Time of Sale, which says "They are upgrading to full membership as they are amazed with [the Supplier's] standards and like the choice of destinations". This, I think, indicates that they likely made the purchase for holidays, and specifically the type of holiday provided by the Supplier.

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

Section 140A: Conclusion

In conclusion, therefore, given all of the facts and circumstances of this complaint, I don't think the credit relationship between the Lender and Mr A and Miss W was 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.

I also indicated that I would provide my findings on the issue of commission once I knew more about that given the circumstances of Mr A and Miss W's complaint. I did that by email on 24 November 2025, saying:

"In my provisional decision, I noted that one of Mr A and Miss W's other concerns related to the alleged payment of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. I explained in my provisional decision that the Lender has confirmed that they did not pay any commission to the Supplier.

But as both sides will 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 ('Hopcraft, Johnson and Wrench').

In light of this, I'm outlining my thoughts on this issue in this letter so that both parties have the opportunity to respond before I finalise my decision.

The legal and regulatory context

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

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

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

As previously explained, the PR 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 ('Hopcraft, Johnson and Wrench').

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 Hopcraft, Johnson and Wrench, 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, Hopcraft, Johnson and Wrench 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 Hopcraft, Johnson and Wrench assists Mr A and Miss W in arguing that their credit relationship with the Lender was unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

Based on what I've seen so far, 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 A and Miss W but as the supplier of contractual rights they 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 them when arranging the Credit Agreement and thus a fiduciary duty.

I recognise that the Lender was and is part of the same group of companies as the Supplier. And I acknowledge that tie may not have been adequately disclosed at the Time of Sale. But I can't currently see why that renders the credit relationship between Mr A and Miss W and the Lender unfair to them – such that I should uphold the complaint. I say that because FHFL has explained that the Supplier would share finance proposals among its approved external finance partners; the Supplier couldn't write all its finance business "in-house"; and FHFL largely provided loans to customers whose circumstances fell outside of its external finance partners' lending terms. So, I'm not persuaded that Mr A and Miss W were led into a credit agreement with the Lender because it was tied in some way to the Supplier.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, the Lender didn't pay the Supplier any commission 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 currently persuaded that the commission 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 A and Miss W."

So, in summary, I wasn't persuaded by any of the arguments put forward for why the credit relationship between Mr A and Miss W and the Lender was unfair to them under Section 140A of the CCA. And I couldn't see any other reason why it would be fair or reasonable to direct the Lender to compensate Mr A and Miss W – all of which led me to provisionally conclude that there was no basis on which to uphold the complaint.

The Lender accepted my provisional decision. The PR disagreed with my overall conclusion. When doing that, it provided significant submissions at first but it went on to withdraw them and replace them with more concise submissions – which are primarily concerned with the suggestion that Mr A and Miss W's Fractional Club membership had been marketed and sold as an investment in contravention of a prohibition on selling timeshares in that way.

The PR also provided some further comments in relation to Mr A and Miss W's Section 75 claim for misrepresentations. And, it repeated its concerns about the provision of information at the Time of Sale and payment of commission to the Supplier by the Lender – albeit with a focus on the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*. As a result, the complaint was passed back to me for further thought and my Final Decision.

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 rules⁴ 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 (when appropriate), what I consider to have been good industry practice at the relevant time.

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.

And having done that afresh, I'm not persuaded to depart from my provisional decision for reasons I'll now explain.

Before I do, I want to make it clear that I recognise that this complaint, when originally made, was wide ranging and made on a number of different grounds - all of which I addressed in my PD.

However, as the PR's more concise response to my provisional decision relates, in the main, to the fairness of the credit relationship under Section 140A, as I haven't been provided with new arguments and/or evidence to consider in relation to the other points previously raised, I see no reason to change or add to my conclusions (as set out in the summary of my provisional decision above) in relation to them. So, I'll focus here on the points the PR *has* raised in response.

Indeed, as I said in my provisional decision, my role as an Ombudsman is to decide what's fair and reasonable in the circumstances of this complaint – rather than address every single point that's been made. And with that being the case, while I have read all of the PR's submissions in full, 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's more, it is important to make the point that, in contrast to what might happen in court, neither side to this complaint has a burden of proof that it must discharge. After all, the jurisdiction under which I'm deciding this complaint is inquisitorial rather than adversarial – which means that my findings are made on the balance of probabilities, in light of the evidence and/or arguments from both sides.

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

It was argued by the PR, when this complaint was first made, that the Supplier misrepresented Fractional Club membership at the Time of Sale. And, I explained that as Mr

⁴ Specifically Rule 3.6.4 in the Dispute Resolution Rules found in the Financial Conduct Authority's Handbook for Rules and Guidance.

A and Miss W first notified the Lender of their Section 75 claim more than six years after the Time of Sale, I didn't think it was unfair or unreasonable of the Lender to reject Mr A and Miss W's concerns about the Supplier's alleged misrepresentations at the Time of Sale. The reasons for this were explained in my provisional decision. And I see no reason to change or add to those.

The PR now says that Section 32 of the LA gives Mr A and Miss W more time to make their claim. I disagree.

Section 32 of the LA has the potential to postpone the relevant limitation period in cases of fraud, concealment, or mistake. I have thought about that here. But in this case the issue(s) the PR has referenced concerning the legality of the timeshare arrangement with the Supplier which it says were concealed or fraudulently misrepresented (namely, the payment of commission and the commercial tie they say existed between the Lender and the Supplier) simply don't relate to the misrepresentations originally alleged (the availability of holidays and being told the membership was an investment).

So, I find it very difficult to see taking into account the submissions provided by the PR in this case, how Section 32 could extend the time limit for Mr A and Miss W.

However, the judgment in *Scotland and Reast*⁵ explains that, even if a limitation period has expired for a standalone misrepresentation claim, relevant misrepresentations that could be attributed to the Lender, can be considered as part of the assessment of the unfairness of the credit relationship. So, I have gone on to consider those matters later in this decision.

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

Having reconsidered the entirety of that relationship along with everything that has now been said and/or provided by both sides, I still don't think the credit relationship between Mr A and Miss W and the Lender was likely to have been rendered unfair to them for the purposes of Section 140A. When coming to that conclusion, I have looked again at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;
3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
4. The inherent probabilities of the sale given its circumstances; and, when relevant
5. Any existing unfairness from a related credit agreement.

I have also reconsidered any commercial (including commission) arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements.

Recognising that misrepresentations are also something which could lead to an unfair credit relationship, I'll explain why, in light of the PR's latest allegations of misrepresentation, I don't think the credit relationship between Mr A and Miss W and the Lender was rendered unfair to them on the basis that membership had been misrepresented.

The law relating to misrepresentation is a combination of the common law, equity and

⁵ *Scotland v British Credit Trust* [2014] EWCA Civ 790 ('*Scotland and Reast*')

statute – though, as I understand it, the Misrepresentation Act 1967 didn't alter the rules as to what constitutes an effective misrepresentation. Summarising the relevant pages in *Chitty on Contracts*, a material and actionable misrepresentation is an untrue statement of existing fact or law made by one party (or his agent for the purposes of passing on the representation, acting within the scope of his authority) to another party that induced that party to enter into a contract.

However, a mere statement of opinion, rather than fact or law, which proves to be unfounded, isn't a misrepresentation unless the opinion amounts to a statement of fact and it can be proved that the person who gave it did not hold it or could not reasonably have held it. It also needs to be shown that the other party understood and relied on the implied factual misrepresentation.

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, Mr A and Miss W's share in the Allocated Property clearly 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 as the PR knows, while the term "investment" is not defined in the Timeshare Regulations, it was agreed by the parties in *Shawbrook & BPF v FOS* 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*" (see paragraph 56).

Yet, contrary to what the PR says, none of the contractual paperwork made any promises that a profit might be made. And, it did not imply let alone suggest that Mr A and Miss W's share in the net sale proceeds from the Allocated Property would be worth more in real terms in the future than at the Time of Sale.

As I said in my provisional decision, 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 possible that Fractional Club membership was marketed and sold to Mr A and Miss W as an investment orally.

But Mr A and Miss W say little about what was said, by whom and in what circumstances for the purposes of determining whether representations by the Supplier amounted to false statements of existing fact rather than expressions of honestly held opinions about the likely value of the Allocated Property in the future. And while the PR's own calculations might cast some doubt over the likelihood of the Allocated Property being sold at a profit given the initial and ongoing costs of it to Mr A and Miss W, there isn't enough evidence to persuade me that the relevant sales representative(s) would have carried out that sort of calculation at the Time of Sale or would otherwise have had information that would indicate that they knew or ought reasonably to have known at the time that any such representations weren't true.

And while the PR might question the exact legal mechanism used to give prospective members an interest in allocated properties, that does not change the fact that the shares of members (like Mr A and Miss W) were clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort.

The PR has also said that the membership was misrepresented for reasons relating to availability of accommodation. But again, little has been said here to support it. In their witness statement for example, this isn't something which is mentioned by Mr A and Miss W.

While they've referred to perceived difficulties with availability, they haven't said anything to suggest they were made any kind of promise(s) by the Supplier in relation to this at the Time of Sale or if they were, what exactly these promises were and how they were not true. And, the PR hasn't provided any evidence to support this point in their response, beyond the bare allegation.

I'm not persuaded, therefore, by the allegations of misrepresentation from the PR. And with that being the case, they aren't reasons to uphold this complaint and direct the Lender to compensate Mr A and Miss W.

The PR continues to argue that Mr A and Miss W were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale. However, as neither the PR nor Mr A and Miss W have submitted any new evidence to further this argument, it is for the same reasons I gave in my provisional decision that I don't think it renders their credit relationship with the Lender unfair to them for the purposes of Section 140A.

But I'll turn now to what continues to be the main reason for the PR's assertion that the credit relationship in question was unfair.

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

As I said in my provisional decision, there is competing evidence in this complaint as to whether the 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. I acknowledged that it was possible that Fractional Club membership was marketed and sold to Mr A and Miss W as an investment in breach of Regulation 14(3). A view I still hold.

But I also thought and still think that it isn't necessary to make a formal finding on that particular issue for the purposes of my determination on this complaint because a breach of Regulation 14(3) by the Supplier is not itself determinative of the outcome in this complaint unless the impact of such a breach suggested otherwise.

The PR disagrees with that and cites the judgment of Mrs Justice Collins Rice in *Shawbrook & BPF v FOS* in support – saying that she found that the selling of a timeshare as an investment (i.e. in a breach of Regulation 14(3) of the Timeshare Regulations) was, itself, sufficient to create an unfair credit relationship.

However, on my reading of *Shawbrook & BPF v FOS*, Mrs Justice Collins Rice didn't find that a breach of Regulation 14(3) of the Timeshare Regulations was "*causative of the legal relations entered into*". She recognised that such a breach was "*conduct that knocks away the central consumer protection safeguard*", but she went on to say that it was the ombudsmen behind the two reviewed decisions who found that such a breach was, given the facts and circumstances of the relevant complaints, causative of the consumers in question purchasing their timeshares and taking out loans to do so.

What's more, the Supreme Court's judgment in *Plevin* makes it clear that regulatory breaches do not automatically 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 v NM Rothschild & Sons Ltd* [2018] EWHC 958 ('*Carney*') and *Kerrigan v Elevate Credit International Ltd* [2020] EWHC 2169 (Comm) ('*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 still seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr A and Miss W and the Lender that was unfair to them and warranted relief as a result, whether the Supplier’s breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

Indeed, doing that accords with common sense, for if events would have unfolded in the same way whether or not such a pre-contractual breach had occurred, it would be difficult to attribute any particular importance to the breach when deciding whether an unfair debtor-creditor relationship ensued, or whether a remedy is appropriate.

If there had been a breach of Regulation 14(3), would it have rendered the credit relationship between Mr A and Miss W and the Lender unfair to them?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I have considered (as I did in my provisional decision) what impact that breach (if there was one) had on the fairness of the credit relationship between Mr A and Miss W and the Lender under the Credit Agreement and related Purchase Agreement.

And on my re-reading of the evidence before me, I’m still not persuaded that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr A and Miss W decided to go ahead with their purchase to the extent that they would have made an entirely different purchasing decision had there not been a breach of Regulation 14(3). I’ll explain.

In their response to my PD, the PR has asserted that I had dismissed Mr A and Miss W’s testimony because ‘human memory is fallible’ and they feel this isn’t an appropriate or fair reason to do so. But, I didn’t make any such comment or finding in my PD.

Indeed, I accepted in my PD that inconsistencies in evidence are a normal part of someone trying to remember what happened in the past. So, I wasn’t surprised that there were some inconsistencies in the testimony provided. But, I did identify some inconsistencies in their

testimony which, in my view, were significant and fundamental enough to undermine, indeed contradict, what they say about what the Supplier said and did to sell the membership to them as an investment. And, for that reason, while I didn't (and still don't) question the truthfulness of what they've said, I still think there is a significant risk that they are mistaken in what they remember. And I therefore still have sufficient doubts as to the reliability of their memories such that I can't place much, if any, weight on it.

The PR has said in response that this applies a 'commercial high court standard of evidence' to the witness statement provided. But, I don't think I have – I've simply explained why I'm not persuaded by it.

The PR has also said that the call note and sales note I referred to in my PD haven't been shared with them and that this is unfair. But, these have been shared with them several times, both prior to and following my PD. So, I don't see that the PR, and Mr A and Miss W, have been denied the opportunity to review this evidence and respond to it with any comments they'd like me to consider. The PR has said that I've accepted the Supplier's records without question, but I don't agree this is the case – I've critically assessed all of the evidence available in the same way. I would highlight here that this is contemporaneous evidence from shortly after the Time of Sale, unlike the witness statement which has been provided. And, the PR hasn't explained in their revised submissions why exactly they think I can't rely on what this evidence says, or indeed given any substantive response to the content of it, for example.

I also highlighted in my PD that after describing in their testimony being told by the Supplier at the Time of Sale that the membership was an investment, Mr A and Miss W say they asked to be taken back to their accommodation i.e. they were not interested in purchasing after allegedly being told this. And, that they only then made the purchase in order to leave the presentation.

They also go on to outline why they're unhappy with the membership now and made the following comments:

"In addition it was impossible to get booked and it appeared this wasn't a members club nor an investment in property.

You could book these resorts through on-line travel companies such as On The Beach etc and have all-inclusive offers you couldn't even get as members. These companies appeared to have priority when it came to booking because the dates I requested were never available. However, I could book with an on-line travel company."

And again, I return here to the fact that Mr A and Miss W made a purchase of a trial membership from the Supplier prior to their Fractional Club purchase. And, the Lender has provided the Supplier's sales note made at the Time of Sale, which says "*They are upgrading to full membership as they are amazed with [the Supplier's] standards and like the choice of destinations*". I still think this indicates that they likely made the purchase for holidays, and specifically the type of holiday provided by the Supplier.

In response to this point in my PD, the PR has set out that the overall cost of the Fractional Club membership, when including the cost of the credit and the annual maintenance fees over its duration, was actually in excess of £40,500. And it says this means that a single annual holiday using the membership actually costs Mr A and Miss W over £2,500 plus travel expenses. The PR asserts that the sheer disproportionality of the expenditure proves that Mr A and Miss W were induced into the contract by the promise of an eventual financial

return from the sale of the Allocated Property, and thus the credit relationship is unfair under Section 140A of the CCA.

But it seems likely that Mr A and Miss W were aware, at the Time of Sale, of the cost of the Fractional Club membership, the interest they were being charged, as well as that they needed to pay maintenance fees every year and the cost of those fees in the first year. And I am not saying that Mr A and Miss W were not interested in their share of the Allocated Property. I am saying that I'm not persuaded by the evidence that they bought the membership on the basis of it being an investment which offered them the prospect of a financial gain.

On balance, therefore, for the reasons I've set out above along with those given in my PD, I don't think the credit relationship between Mr A and Miss W and the Lender was unfair to them even if the Supplier had breached Regulation 14(3), as I don't think any such breach (if one occurred) was material to their purchasing decision.

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

As I've already said, I set out my thoughts in relation to the implications of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench* for this complaint on 24 November 2025. I remain satisfied that the Lender has provided me with sufficient information to reach a conclusion about its commercial (including commission) arrangements with the Supplier. I've seen nothing in this case that leads me to think that the information in question is inaccurate. And while I recognise that the PR might disagree with the thoughts I shared on 24 November 2025, it hasn't offered any evidence and/or arguments that lead me to think that (1) the factors referenced by the Supreme Court have a bearing on the outcome of this complaint given its circumstances or (2) there are any other reasons why the commercial (including commission) arrangements between the Supplier and the Lender rendered the credit relationship between the latter and Mr A and Miss W under the Credit Agreement and related Purchase Agreement unfair for the purposes of Section 140A.

In response to my provisional decision, the PR also argues that the Supplier breached Regulation 12 of the Timeshare Regulations (which is concerned with the provision of key information) because it failed to provide Mr A and Miss W with information on the market value of the Allocated Property, title deeds and a proper legal description beyond a basic unit number.

However, it isn't clear what the PR means by "proper legal description" and has provided no authority for the suggestion the Supplier had to provide Mr A and Miss W with information on the title deeds of the Allocated Property. What's more, when it comes to the market value of the Allocated Property, I would draw the PR's attention to what Mrs Justice Collins Rice said in paragraphs 106 and 110 of her judgment in *Shawbrook & BPF v FOS*:

"Both ombudsmen rely on the reference in Sch.1 to 'exact nature and content of the rights' as being the basis for perceiving a legal obligation to provide 'value' information. But first, having regard to the high level of specificity in the Schedule, it is obvious that 'value' information is nowhere specified as such. And second, 'exact nature and content of the rights' is clearly intended, in context, to be a fair and objective identification and description of those rights. 'Value' information may possibly be context for, or commentary on, those rights, but the 'exact nature and content of rights' is something different from information which may (or may not) be relevant to how much they might be worth, now or in the future."

"I do not, and do not need to, go so far as to infer from the Regulations a legal prohibition on the provision of valuation information. My conclusion is that there is no legal obligation,

derivable from Reg.12 of the Timeshare Regulations, to provide it, and that the ombudsmen's solution is, in its own terms, distinctly problematic for the regulatory framework. It remains my view that the principal legal consumer-protection control over buying and selling fractional ownership timeshares is the Reg.14(3) prohibition. That provision alone makes it hard enough to market a timeshare product containing a bare interest in the proceeds of the deferred sale of real property lawfully, without inviting the fleshing out of the law as positively demanding investor-protection information obligations at the same time."

(My emphasis added)

In any event, 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.

So, even if it could be said that the Supplier failed to give Mr A and Miss W sufficient information, in good time, in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations for some of the reasons the PR gives, neither they nor the PR have persuaded me that they were deprived of information that would have led them to make a different purchasing decision at the Time of Sale when I've already found that the prospect of a financial gain from the Allocated Property was not an important and motivating factor behind their purchase. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why that could be said to have rendered the credit relationship in question unfair to them.

Conclusion

Having adopted my provisional findings, and reconsidered the facts and circumstances of this complaint, I still don't think the Lender acted unfairly or unreasonably when it dealt with Mr A and Miss W's section 75 claim. I'm also still not persuaded that the Lender was party to a credit relationship with Mr A and Miss W 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 for me to direct the Lender to compensate Mr A and Miss W.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Miss W to accept or reject my decision before 30 April 2026.

Fiona Mallinson
Ombudsman