DRN-5973161

The complaint

Mr and Mrs M'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.

Mr and Mrs M are represented in their complaint by a professional representative ("PR").

What happened

I issued a provisional decision on this complaint on 25 July 2025, in which I set out the background to this matter and my provisional findings. A copy of the provisional decision is appended to and forms part of this final decision. As a result, it's not necessary for me to go over all the details again, but to summarise:

- Mr and Mrs M purchased a timeshare (the "Fractional Club") from a timeshare provider (the "Supplier") on 22 August 2018 (the "Time of Sale"). They bought 1,200 "points" in the club, which could be used to book holiday accommodation annually with the Supplier. It was also a type of asset-backed timeshare, coming with a share in the net sale proceeds of a property (the "Allocated Property") named on Mr and Mrs M's contract, at the end of their membership.

- The cost of the timeshare was £18,964, with a balance of £14,573 to pay after trading in an existing membership. Mr and Mrs M paid £500 of this balance themselves, with the remainder, and existing debt relating to a previous membership, financed by a loan of £18,087 (the "Credit Agreement") with the Lender.

- Mr and Mrs M later complained to the Lender, via PR, about a number of matters which they thought gave them a valid claim against the Lender under Section 75 of the CCA, or which rendered the credit relationship between them and the Lender unfair to them within the meaning of Section 140A of the CCA. These included misrepresentations by the Supplier, pressured selling by the Supplier, improper marketing of the product as an investment in breach of the regulations on selling timeshares at the time, and irresponsible lending.

In my provisional decision, I said I was not minded to uphold the complaint. Again, my reasoning can be found in the appended document, but to summarise:

- I didn't think there was sufficient persuasive evidence that any misrepresentations had been made by the Supplier as alleged. Some of the statements, if made, sounded likely to be statements of honestly held opinion, and others were simply too vague or too lacking in colour or context for me to be able to draw any positive conclusion that an actionable misrepresentation had been made.

- I'd not seen evidence the lending was unaffordable for Mr and Mrs M, which would need to be shown if any complaint about the adequacy of the Lender's affordability checks were to succeed.

- While it was possible there had been unfair terms in Mr and Mrs M's contract with the Supplier, I'd not seen evidence to demonstrate these terms had caused them any detriment. Similarly, if the Credit Agreement had been arranged by an unauthorised credit broker (which I made no finding on), there was no evidence this had caused any detriment either.

- I accepted Mr and Mrs M may have felt pressured by the Supplier at the Time of Sale and acknowledged the Supplier's sales processes could be lengthy, but it was unclear exactly *how* the Supplier had pressured them, and the fact they had not used their cooling off period to cancel their purchase meant I was unable to conclude in their favour on this point.

- I thought it was possible the Supplier had marketed the timeshare to Mr and Mrs M improperly as an investment, but their own testimony did not suggest that this was an important factor in their decision-making process, which it would have need to have been were any impropriety by the Supplier to have rendered their credit relationship with the Lender unfair to them.

I invited the parties to the complaint to respond to my provisional decision. The Lender said it accepted the provisional decision. PR, on Mr and Mrs M's behalf, disagreed. I could summarise its arguments as follows:

- It hadn't shared the Investigator's assessment on this complaint with Mr and Mrs M, saying this was done in order not to influence their recollections. Mr and Mrs M were also unaware about the judgment handed down in *Shawbrook and BPF v FOS*[1]. PR said this means Mr and Mrs M's recollections have not been influenced by either the Investigator's assessment or the judgment.

- My conclusion that Mr and Mrs M's decision to purchase the timeshare had not been materially motivated by making a financial gain or profit (i.e. that it was an investment) was simply my opinion, arrived at without having had the benefit of speaking to them. It was unfair for Mr and Mrs M to be penalised for not being able to find the magic words in their witness statement that would cause their complaints to be upheld. The fact that Mr and Mrs M had mentioned the Supplier described the product as an investment clearly meant it was important to them. The fact that many other customers of the Supplier had had the same experience should also weigh in Mr and Mrs M's favour.

- There were contradictions between the purchase paperwork and the fractional ownership certificate Mr and Mrs M had received, as to the length of the contract and the time when the fractional asset would be sold. This was an example of misrepresentation, unfair terms and uncertainty in the contract, making the whole agreement unenforceable.

The case has now been returned to me to decide.

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)

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[1] *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('*Shawbrook & BPF v FOS*').

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 3.7.3R
- CONC 4.5.3R
- CONC 4.5.2G

The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ("PRIN"). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

What I've decided – and why

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

Following the responses from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

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

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

PR's further comments in response to the provisional decision only relate to the issue of whether the credit relationship between Mr and Mrs M and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to them as an investment at the Time of Sale.

As outlined in my provisional decision, PR originally raised various other points of complaint, all of which I addressed at that time. But it didn't make any further comments in relation to those in its response to my provisional decision. Indeed, it hasn't said it disagrees with any of my provisional conclusions in relation to those other points. And since I haven't been

provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my provisional decision. So, I'll focus here on PR's points raised in response.

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

Where PR says, in its response to my provisional decision, that Mr and Mrs M's recollections had not been influenced by either our Investigator's unfavourable assessment of the complaint, or the judgment in *Shawbrook & BPF v FOS*, it appears to have been responding to a point that I didn't make in the provisional decision.

That said, the timing of Mr and Mrs M's recollections, coming as they did after the events PR mentions, does lead to some concern that they would have been influenced by just those events. After all, PR's response to our Investigator's assessment was focused on how Fractional Club membership had been sold to Mr and Mrs M as an investment, and their recollections were provided to support that response. I find it difficult to see how Mr and Mrs M could have disagreed with the Investigator's assessment on the basis the membership was sold to them as an investment, if they were unaware of our Investigator's conclusions. I think it is more likely that they were aware, and that there is therefore a risk that their testimony was coloured by our Investigator's assessment.

So I think, even if I had found Mr and Mrs M's recollections made a strong case for them having been motivated to buy Fractional Club membership because of the prospect that it could be a profitable investment, I would have some difficulty attaching enough weight to them to be able to conclude that what had happened rendered their credit relationship with the Lender unfair to them.

In any event, while I acknowledge PR disagrees with my opinion regarding how Mr and Mrs M's recollections are to be interpreted, that was and *remains* my opinion. I'm not convinced that a mere mention of the Supplier having sold the product as an investment automatically means this was a material factor in Mr and Mrs M's purchasing decision. It's unclear what Mr and Mrs M meant by "investment" in their recollections, but they appear to understand it to have been a way to offset their annual maintenance fees, not a means of making a financial gain. And the emphasis in their recollections is on the unpleasant sales experience they had with the Supplier, in which they say they felt under significant pressure, rather than on any investment aspect of the product.

I note PR's point that other customers of the Supplier had a similar experience in that they reported the Supplier marketing the Fractional Club product as an investment. That may well be the case, but it would only speak to, perhaps, the Supplier having a tendency to frame the product as an investment to potential purchasers. It doesn't assist in ascertaining the motivations of any given purchaser, such as Mr and Mrs M. My conclusion is that, if the Supplier did improperly market or sell the Fractional Club membership to them as an investment, this was not a material factor in their purchasing decision and did not render their credit relationship with the Lender unfair to them.

The discrepancies between dates on the Purchase Agreement and the timeshare certificate

I will also address PR's point regarding the apparent ambiguity in the proposed sale date of the Allocated Property. PR suggests that a delayed sale date could lead to an unfairness to Mr and Mrs M in the future, as any delay could mean a delay in the realisation of their share in the Allocated Property.

It does appear that the proposed date for the commencement of the sales process, as set out on the timeshare certificate, is 31 December 2032. This date indicates that the membership has a term of 14 years. PR says there is another document that formed part of the paperwork at the Time of Sale, which said:

> "*The Owning Company will retain such Allocated Property until the automatic sale date in **19 years time** or such later date as is specified in the Rules or the Fractional Rights Certificate.*" (bold my emphasis).

I observe here that neither PR nor the Lender has provided a full copy of the purchase paperwork in this case. The document PR refers to is not in evidence. That said, given the many examples of the Supplier's purchase agreements that I've seen dating to around this time, I'm satisfied the document PR refers to likely exists for this purchase, and says what PR claims it says. However, I'm also satisfied that it's likely another document – called the "Member's Declaration" – would exist for this purchase and support the date of 31 December 2032 which appears on the timeshare certificate.

It seems clear to me that the commencement date for the start of the sales process is 31 December 2032. This actual date is most likely repeated in the sales documentation as I've set out above.

So, I can't see that this is a reason to find the credit relationship unfair and uphold this complaint.

S140A 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'm not persuaded that the credit relationship between Mr and Mrs M and the Lender under the Credit Agreement and related purchase agreement was unfair to them. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

My final decision

For the reasons explained above, and in my appended provisional decision, I do not 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 23 December 2025.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at the same set of conclusions as our Investigator, but I've explained my reasons in more detail, so I'm giving the parties to the complaint an opportunity to make further submissions, before I make my decision final.

The deadline for both parties to provide any further comments or evidence for me to consider is **8 August 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mr and Mrs M'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 and Mrs M purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 22 August 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,200 fractional points, which could be used annually to book holiday accommodation within the Supplier's portfolio.

Including legal and admin fees, the cost of the membership was £18,964. Mr and Mrs M were then given an allowance of £4,395 for the trade-in of what appears to have been a "Trial" membership with the Supplier, leaving a final price to pay of £14,573.

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 the Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr and Mrs M paid for their Fractional Club membership by paying £500 and then taking finance from the Lender for a total of £18,087 (the 'Credit Agreement'). The finance included an amount of consolidated debt, which is why the amount borrowed was higher than the purchase price.

Mr and Mrs M – using a professional representative (the 'PR') – wrote to the Lender on 27 January 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr and Mrs M's concerns as a complaint and issued its final response letter on 6 September 2022, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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.

The legal and regulatory context

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

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here.

What I've provisionally decided – and why

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I do not think this complaint should be upheld.

However, 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

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.

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

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs M were:

1. Told that they had purchased an investment that would "considerably appreciate in value".
2. Promised a considerable return on their investment because they were told that they would own a share in a property that would considerably increase in value.
3. Told that they could sell their Fractional Club membership to the Supplier or easily to third parties at a profit.
4. Made to believe that they would have access to "the holiday apartment" at any time all year round.

However, neither points 1 nor 2 strike me as misrepresentations even if such statements had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than their opinion. Statements of opinion will generally only lead to an actionable misrepresentation where a person states an opinion they do not in fact hold, or which they did not have reasonable grounds to hold, therefore impliedly making a false statement of fact. In this case, there's simply not enough information for me to be able to say that were such an opinion to have been expressed, that it was either not held, or there were no reasonable grounds for it to have been held. To have marketed or sold the product as an investment would have been improper however, and I go on to look at that issue in more detail later on in this decision.

As for points 3 and 4, while it's *possible* that Fractional Club membership was misrepresented at the Time of Sale for one or both of those reasons, I don't think it's *probable*. They're given little to none of the colour or context necessary to demonstrate that the Supplier made false statements of existing fact and/or opinion. In other words, what has been said is rather vague and lacking in detail, and insufficient to support the allegations being made. And as there isn't any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for these reasons, I don't think it was.

So, while I recognise that Mr and Mrs M - and the PR - have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

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

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

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

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;
3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; 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 and Mrs M and the Lender.

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

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

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

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

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

Mr and Mrs M also say they were put under a lot of pressure to purchase Fractional Club membership. I acknowledge that Mr and Mrs M may have felt exhausted by a sales process that went on for a long time, and I'm aware that the Supplier's sales processes could be somewhat lengthy. 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 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.

Overall, therefore, I don't think 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 is another reason, perhaps the main reason, why the PR says the 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.

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

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 Fractional Club membership as an investment. This is what the provision said at the Time of Sale:

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

But the PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mr and Mrs M were told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

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

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

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

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs 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, through disclaimers and other statements within its contractual paperwork, 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.

On the other hand, I acknowledge that the Supplier's sales process 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's 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 the Consumer rendered unfair?

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

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs M 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.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when they decided to go ahead with their purchase. While they describe, in a witness statement produced in March 2024 following our Investigator's assessment, being told by the Supplier that the product was an investment, I do not get the impression that the possibility of making a financial gain or profit from the product was a material factor in their purchasing decision. I say this because Mr and Mrs M focus in their statement on the feeling of being under pressure to make their purchase, and their disappointment at the holiday-related features of the product. And what they do say about the investment element suggests they considered it was a way of off-setting the management fees associated with the Fractional Club membership (as opposed to being a vehicle for making a profit). That doesn't mean they weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs M themselves don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

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).

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs M's Section 75 claim and 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 provisional decision

For the reasons explained above, I'm not minded to uphold this complaint. I now invite the parties to the case to let me have any further submissions by **8 August 2025**. I will then review the complaint again.

Will Culley
Ombudsman