

The complaint

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

Background to the complaint

Mr M and Miss S were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 14 September 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2,600 fractional points which, after trading in their existing membership, cost £8,828 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr M and Miss S 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 M and Miss S paid for their Fractional Club membership by taking finance of £11,963 from the Lender (the 'Credit Agreement') in both of their names, which also consolidated lending they had taken out to purchase their existing membership.

Mr M and Miss S – using a professional representative (the 'PR') – wrote to the Lender on 26 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 M and Miss S's concerns as a claim and issued its response on 11 March 2022, rejecting it on every ground. It later dealt with the matter as a complaint and issued its final response letter on 2 October 2022, maintaining its decision to reject the claim.

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 M and Miss S disagreed with the Investigator's assessment and asked for an Ombudsman's decision. So, the complaint was passed to me to decide. I considered the matter and issued a provisional decision (the 'PD') dated 12 November 2025. In that decision, I said:

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

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's to decide what's 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.

The legal and regulatory context

In considering what's fair and reasonable in all the circumstances of the complaint, I'm required under DISP 3.6.4 R 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 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's not necessary to set out that context here.

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.

In general, lenders can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 (the "LA") as 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 have been available in court. So, it's relevant to consider if Mr M and Miss S's Section 75 claim was time-barred under the LA before it was put to the Lender.

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. Any claim against a lender under Section 75 is also "an action to recover any sum by virtue of any enactment" under Section 9 of the LA. Such claims also have a time limit of six years from the date the cause of action accrued.

In claims for misrepresentation, the cause of action accrues at the point a loss is incurred. In Mr M and Miss S's case, that was at the Time of Sale because they entered into the agreement to purchase fractional club membership, and the related Credit Agreement to finance the purchase, based on the alleged misrepresentations of the Supplier which they say they relied on.

Mr M and Miss S first notified the Lender of their Section 75 claim on 26 January 2022. As that was more than six years after the Time of Sale, I don't think it was unfair or unreasonable of the Lender to reject their claim relating to the Supplier's alleged misrepresentations.

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

I've already explained why I don't think the Lender acted unfairly or unreasonably by rejecting Mr M and Miss S's Section 75 claim relating to the Supplier's alleged misrepresentations. But I must explore these alleged misrepresentations, along with other aspects of the sales process that are the subject of dissatisfaction, 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 M and Miss S and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

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

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

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

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

The PR says that Fractional Club membership was misrepresented by the Supplier at the Time of Sale because Mr M and Miss S 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 representations 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 an honestly held opinion as there isn’t any accompanying evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

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 demonstrating that the Supplier made false statements of existing fact and/or opinion. 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.

The PR also says that the right checks weren’t carried out before the Lender lent to Mr M and Miss S. I haven’t seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr M and Miss S 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’m not satisfied that the lending was unaffordable for Mr M and Miss S.

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 M and Miss S 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. And as the lending doesn’t look like it was unaffordable for them, 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 M and Miss S 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.

Another reason the PR has given is that there were 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 M and Miss S in practice, nor that any such terms led them to behave in a certain way to their detriment, I’m not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

I acknowledge that Mr M and Miss S may have felt weary after a sales process that went on for a long time, and that they have said they tried to cut the process short so they could get their children something to eat, which I can appreciate would have been a concern. 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 M and Miss S 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 M and Miss S'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 the 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'm satisfied, that Mr M and Miss S'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 M and Miss S 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 M and Miss S the prospect of a financial return – whether or not, like all investments, that turned out to be more than what they first put into it. But it's 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 M and Miss S as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e. a profit) given the facts and circumstances of this complaint.

There is 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's 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 M and Miss S, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative(s) may have positioned Fractional Club membership as an investment. So, I accept it's also possible that Fractional Club membership was marketed and sold to Mr M and Miss S 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 Mr M and Miss S 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 M and Miss S 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'm to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr M and Miss S 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 Mr M and Miss S decided to go ahead with their purchase.

The PR has provided us with a witness statement from Mr M and Miss S in which, amongst other things, they said:

“We said on several occasions that it was a big decision to make and that we weren't keen on making that kind of decision on the spot. Each time this refused and were told that we had to make the decision during the session or we would miss out on this wonderful opportunity. They were very convincing in the way they “sold” the idea saying that we would be able to enjoy luxury holidays whenever we wanted. It was explained to us that the holidays were one part of it but also that it would be an asset to us because with it being a fractional ownership scheme, at the end of the time period we would benefit from a fraction of the sale price of the property. (sic)”

Mr M and Miss S's recollections of what the Supplier's sales representative(s) told them about the investment element of Fractional Club membership don't strike me as anything more than a description of it. They don't make out why that appealed to them, nor what the Supplier told them about the prospect of a financial gain that induced them into going ahead with the purchase.

In addition, given the wider circumstances of Mr M and Miss S's purchase, it appears inherently improbable to me that the prospect of a financial gain was an important and motivating factor in their decision to purchase membership. They purchased the Supplier's “Signature Collection” version of membership at the Time of Sale, which provided them with significantly better holiday rights, including access to a higher standard of accommodation, than their existing membership. Their recollection that they were “sold” the membership primarily on the basis of the luxury holidays they would be able to take whenever they wanted is consistent with that. Furthermore, it's not clear to me from what they have said why the prospect of a financial gain from “Signature Collection” membership was an important and motivating factor in their decision to purchase it when they already owned a fractional timeshare membership that included an investment element.

With that being the case, as the other evidence provided to me does not support the assertion that the prospect of a financial gain was an important and motivating factor when Mr M and Miss S decided to go ahead with their purchase, I'm not persuaded that it was.

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 M and Miss S 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'm not persuaded that Mr M and Miss S'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 proceeded 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 M and Miss S and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

Mr M and Miss S's commission complaint

*I note that one of Mr M and Miss S's other concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. The Supreme Court's recent judgment *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('Johnson, Wrench and Hopcraft') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer–credit brokers. So, once the implications of that judgment become clear, I will finalise my findings on this complaint."*

In conclusion, given the facts and circumstances of this complaint, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mr M and Miss S's Section 75 claim, and I was 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 could see no other reason why it would be fair or reasonable to direct the Lender to compensate them. But as the implications of the Supreme Court's judgment on *Johnson, Wrench and Hopcraft* had not become clear, it was necessary to wait and consider the implications of that judgment.

I gave both parties the opportunity to respond to the PD. The PR responded stating it did not accept the PD, and it provided some further comments and evidence it wished to be considered. The Lender confirmed it accepted the PD.

After the implications of *Johnson, Wrench and Hopcraft* had become clear, I issued a Side Letter on 6 January 2026 setting out my thoughts about Mr M and Miss S's commission complaint, which were as follows:

"The legal and regulatory context

In considering what's fair and reasonable in all the circumstances of the complaint, I'm required under DISP 3.6.4 R 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's 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

The Provision of Information by the Supplier at the Time of Sale

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: *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 DISP 3.6.4 R.

But I don't think Hopcraft, Johnson and Wrench assists Mr M and Miss S 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.

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

I acknowledge it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But as I've said before, 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. And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it's for the reasons set out below that I don't currently think any such failure is itself a reason to find the credit relationship in question was unfair to Mr M and Miss S.

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 M and Miss S 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.

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 M and Miss S.

Section 140A: Conclusion

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Mr M and Miss S and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis."

So like I provisionally concluded, given the facts and circumstances of this complaint, I still did not think that the Lender acted unfairly or unreasonably when it dealt with Mr M and Miss S's Section 75 claim. I still was not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement and related Purchase Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

I gave both parties the opportunity to respond to the Side Letter. The Lender confirmed it had nothing further to add. The PR did not respond.

As the parties have now had the opportunity to respond to the PD and the Side Letter, and having received the responses I mentioned above, I'm now finalising my decision on this complaint.

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

The PR's further comments in response to the PD in the main relate to the issue of whether the credit relationship between Mr M and Miss S and the Lender was unfair to them. In particular, the 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 PD, the 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 all of those points in its response to my PD. Indeed, it hasn't said it disagrees with any of my provisional conclusions in relation to those other points. The same can also be said in relation to Mr M and Miss S's commission complaint, which I set out my thoughts on in my Side Letter, and which the PR did not respond to. Since I haven't been provided with anything more in relation to those other points or Mr M and Miss S's commission complaint by either party, I see no reason to change my conclusions in relation to them as set out in my PD and my Side Letter. So, I'll focus here on the PR's points raised in its 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

As I explained in my PD, Mr M and Miss S's witness statement only described the investment element of Fractional Club membership, it did not go on to explain why that appealed to them, nor what the Supplier told them about the prospect of a financial gain that induced them into going ahead with their purchase.

I also said it appeared inherently improbable to me that the prospect of a financial gain motivated Mr M and Miss S to go ahead with their purchase. I said that because they purchased the Supplier's "Signature Collection" version of membership which provided them with significantly better holiday rights. And their witness statement did not make out why the prospect of a financial gain from this version of membership motivated them to upgrade from their existing Fractional Club membership. I also acknowledged that I didn't think that meant they weren't interested in a share in the Allocated Property, but their evidence ultimately did not persuade me their purchase was motivated by the prospect of a financial gain.

The PR argues the fact Mr M and Miss S were interested in holidays does not mean their decision to purchase membership could not have been motivated by the possibility of a profit. It also says that their purchase of the Supplier's Signature Collection version of membership was supposed to provide them with a higher return on their investment when the Allocated Property is sold because it is of a higher standard. It says the possibility of a profit was implied by the Supplier because it told them there was a high demand for these properties, and it showed them a number of physical characteristics of these properties that led them to expect it would increase in value. And ultimately, they clearly stated the benefits that "*obviously convinced them*" to purchase membership, which included potential gains from the sale of the Allocated Property.

I have carefully considered all of the PR's comments about Mr M and Miss S's witness statement, but for the reasons I have explained above and in my PD, I still don't find their evidence persuades me they purchased membership because of any breach of Regulation 14(3).

The PR also says that as the Supplier's pricing sheet set out the "Unit share" Mr M and Miss S acquired under their Fractional Club membership, this shows the investment element played "*quite an important role*" in convincing them to purchase it. I don't agree with that analysis. The pricing sheet was a proforma document that captured a number of details about the purchase in a standardised format. The fact the unit share acquired was recorded indicates the purchase included an investment element. But it follows that the Supplier would have recorded that information irrespective of the customer's motivations for making the purchase. So I don't consider this document offers an insight into Mr M and Miss S's motivation for making their purchase.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*¹, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my PD, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances.

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*').

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

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 M and Miss S and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. So, I don't think it's fair or reasonable that I uphold this complaint on that basis.

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 M and Miss S's Section 75 claim, and I'm 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 final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Miss S to accept or reject my decision before 18 February 2026.

Asa Burnett
Ombudsman