

## The complaint

Mr and Mrs P's complaint is, in essence, that First Holiday Finance 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.

## What happened

I issued a provisional decision on Mr and Mrs P's complaint on 1 August 2025, in which I set out the background to the complaint and my provisional findings. A copy of that 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 briefly:

- Mr and Mrs P purchased a timeshare (the "Fractional Club") from a timeshare provider (the "Supplier") on 8 May 2019 (the "Time of Sale"). They bought 1,540 points in the club, which could be used to book holiday accommodation annually with the Supplier. It was also a kind of asset-backed timeshare, coming with a share in the net sale proceeds of a property (the "Allocated Property") named on Mr and Mrs P's contract, at the end of their membership.
- The cost of the timeshare was £24,187, with £10,667 to pay after trading in an existing membership. This was financed by a loan of £10,167 with the Lender, while £500 was financed by other means.
- Mr and Mrs P 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, 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, the reasons for this can be found in the appended document, but to summarise:

- I didn't think there was persuasive evidence that the Supplier had made any actionable misrepresentations to Mr and Mrs P.
- The various matters referred to which Mr and Mrs P considered made their credit relationship with the Lender unfair to them, had not rendered that credit relationship unfair. Where there had potentially been improper acts or omissions by the Supplier or Lender, there was insufficient evidence these had led to detriment to Mr and Mrs P.
  - In particular, one of Mr and Mrs P's key points of concern had been the Supplier having allegedly sold the timeshare to them as an investment. However, the evidence submitted to support this was difficult to attach much

weight to, due to when and how it had been received, and did not strongly indicate that any improper selling by the Supplier in this way had actually led them into the purchase in any event.

I asked the parties to the complaint to provide any further submissions they wanted me to consider. PR, on Mr and Mrs P's behalf, disagreed with the provisional decision. PR argued that the evidence from Mr and Mrs P of the timeshare having been sold as an investment was credible and persuasive, while evidence provided by the Supplier was the opposite and simply couldn't be relied on because the Supplier would never admit to having mis-sold the product. It was wrong to favour the Supplier's notes made at the Time of Sale as a result.

PR also added that there were contradictions in the purchase paperwork and the fractional ownership certificate Mr and Mrs P 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) 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.

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 comments in response to the provisional decision relate only to the issue of whether the credit relationship between Mr and Mrs P and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to Mr and Mrs P 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?**

Having considered the entirety of the credit relationship between Mr and Mrs P 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 in relation to Fractional Club membership, including the contractual documentation and disclaimers made by the Supplier;
3. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements;
4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
5. The inherent probabilities of the sale given its circumstances; and, when relevant
6. 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 and Mrs P and the Lender given their circumstances at the Time of Sale.

### **The Supplier's alleged breach of Regulation 14(3) of the Timeshare regulations**

PR says it hadn't shared the Investigator's assessment on this complaint with Mr and Mrs P, saying this was done in order not to influence their recollections. PR said Mr and Mrs P were also unaware about the judgment handed down in *Shawbrook and BPF v FOS*<sup>1</sup>. PR said this

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<sup>1</sup> *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*').

means their recollections have not been influenced by either the Investigator's assessment or the judgment.

Part of my assessment of Mr and Mrs P's testimony was to consider *when* it was written, and whether it may have been affected by external factors such as the widespread publication of the outcome of *Shawbrook and BPF v FOS*.

I have thought about what PR has said, but on balance, I don't find it a credible explanation of the contents of Mr and Mrs P's evidence. Here, PR responded to our Investigator's assessment to say that Mr and Mrs P alleged that Fractional Club membership had been sold to them as an investment and it provided evidence from Mr and Mrs P to that effect. I fail to understand how Mr and Mrs P disagreed with the assessment on the basis that the timeshare was sold as an investment if they didn't know our Investigator's conclusions. It follows, in my view, that Mr and Mrs P did know about our Investigator's assessment before their evidence was provided.

So, I maintain that there is a real risk that Mr and Mrs P's testimony was coloured by the Investigator's assessment and/or the outcome in *Shawbrook & BPF v FOS*. And, on balance, the way in which the evidence has been provided makes me conclude that I can place very little weight on it.

I acknowledge the arguments PR has made regarding what Mr and Mrs P say in their testimony about the Supplier having sold the timeshare to them as an investment, and of the weaknesses in the Supplier's own contemporaneous evidence. But I think, ultimately, that the timing of Mr and Mrs P's evidence, and the difficulties that causes with being able to attach sufficient weight to it to be able to conclude both that the Supplier marketed the timeshare to them as an investment *and* this was a material factor in their purchasing decision, means I'm unable to arrive at the conclusions PR wants me to.

So, ultimately, for the above reasons, along with those I already explained in my provisional decision, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr and Mrs P's purchasing decision.

#### The discrepancies between dates on the Purchase Agreement and Mr and Mrs P's 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 P 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 owners' certificate, is 31 December 2034. This same date is set out under point 1 of the Members Declaration, which has been initialled and signed as being read by Mr and Mrs P. This date indicates that the membership has a term of 15 years. The ambiguity identified by PR is that in the Information Statement provided as part of the purchase documentation it says the following:

*"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).

It seems clear to me that the commencement date for the start of the sales process is 31 December 2034. This actual date is 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.

### **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 and Mrs P and the Lender under the Credit Agreement and related agreement to purchase the timeshare 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.

### **My final decision**

For the reasons explained above, and in my appended provisional decision, I do not uphold Mr and Mrs P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 26 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 broadly the same conclusions as our Investigator, but have explained my reasons in more detail, so I will be giving the parties some additional time 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 **15 August 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

### **The complaint**

Mr and Mrs P's complaint is, in essence, that First Holiday Finance 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.

### **What happened**

Mr and Mrs P were members of a timeshare provider (the 'Supplier') – having already made a purchase from it in October 2018, using finance from a different lender. 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 8 May 2019 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,540 fractional points at a cost of £24,187 (the 'Purchase Agreement'). They were given a trade-in value of £13,520 for their existing membership, leaving £10,667 to pay.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs P 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. The version of the Fractional Club membership Mr and Mrs P bought on this occasion was known as "Signature", which guaranteed them the opportunity to stay in the Allocated Property each year during a specific week.

Mr and Mrs P paid for their Fractional Club membership by taking finance of £10,167 from the Lender (the 'Credit Agreement'). They paid the remaining £500 by other means.

Mr and Mrs P – using a professional representative (the 'PR') – wrote to the Lender on 11 January 2023 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't really 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 P's concerns as a complaint and issued its final response letter on 18 January 2023, 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 P 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 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 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**

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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 P 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) falsely stated they had an opinion which 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*. These allegations are given little to none of the colour or context necessary to demonstrate 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.

So, while I recognise that Mr and Mrs P - 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 P 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:

7. 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;
8. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;
9. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
10. The inherent probabilities of the sale given its circumstances; and, when relevant
11. 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 and Mrs P and the Lender.

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

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



The PR says, for instance, that the right checks weren't carried out before the Lender lent to Mr and Mrs P. 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 P 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 P. Indeed, no evidence has been provided on this point for me to consider.

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 P 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 how that led to Mr and Mrs P experiencing 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 P 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.

While not emphasised by the PR, I note Mr and Mrs P have mentioned, in a witness statement they appear to have written in February 2024, that they'd felt pressured by the Supplier to upgrade in May 2019. I'm aware the Supplier's sales process could go on for a long time, and it seems in this case that the Supplier's own records indicate Mr and Mrs P were with their salespeople for up to nine hours before they made their purchase. So I don't doubt they may have felt somewhat exhausted by the experience. 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 upgrade their membership when they simply did not want to. They were 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. It's also worth mentioning, I think, that Mr and Mrs P did not make their purchase on the day they spent nine hours with the salespeople, and appear to have returned the following day and gone ahead after being offered incentives by the Supplier. So I think they were aware they could have chosen not to make the purchase. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs P 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 P 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 P'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 P 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 P 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 P as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

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

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs P, 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 P 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 P 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 P 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 *at the time*.

I will explain why, but first I think it's necessary to comment on the available evidence in this case. Until February 2024, following an unfavourable assessment from our Investigator, we had received no testimony from Mr and Mrs P in their own words as to what happened at the Time of Sale. All we had was the Letter of Complaint, which is materially the same in content and allegations as many other letters I have seen from the PR relating to other complainants. In other words, the allegations in the Letter of Complaint are generic and of very limited assistance in determining what happened at the Time of Sale.

Mr and Mrs P did later provide some testimony, between four and five years after the events they complain about. The evidence suggests the PR had a discussion with them following our Investigator's assessment, after which they emailed the PR with a statement of their recollections from the Time of Sale (and of their previous purchase, which had been financed by a different lender). It is difficult to attach as much weight to a statement produced this many years after the Time of Sale, compared to a statement written nearer the time when memories may have been fresher and freer from the potential influence of later events.

Since the Time of Sale various events have occurred, such as the judgment in the case of *Shawbrook & BPF v. FOS*<sup>2</sup>, the receipt of an unfavourable assessment from our Investigator, and the process of preparing and proceeding with a mis-selling claim. All of these things can influence a person's memories or recollections, as discussed in the case of *Gestmin SGPS SA v Credit Suisse (UK) Ltd, WL 6047393 (2013)*. I've needed to bear this in mind in this case.

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<sup>2</sup> In this case the High Court set out a comprehensive analysis of complaints involving fractional timeshares and provided some clarity on matters such as the potential for a timeshare provider selling a timeshare as an investment, to cause unfairness in the relevant credit relationship between the purchaser and the lender financing the purchase.

That said, I've considered Mr and Mrs P's recollections carefully. They recall the Supplier mentioning that by upgrading to the "Signature" variation of the Fractional Club product, they'd have a fraction in a newer and more expensive property, which would get them more money back and a bigger pay out at the end of their membership. They also said they were told that the membership would be shorter so they'd get their pay out sooner.

Mr and Mrs P also said they recall other things. They mention they were interested in the original Fractional Club product (which they'd bought the previous year) because they really liked to travel. They said that when selling them the Signature upgrade, the Supplier said this would allow them to have better holidays which they'd get more out of. I've considered the notes recorded by the Supplier at the time of the 2018 sale. These go into a fair amount of detail around Mr and Mrs P's reasons for buying, which I think are consistent with their stated interest in the holiday features of the product. For example:

*"nice young couple...very into holidaying they have already visited 18 countries and planning to hit 30 countries before the[y] become 30 years old."*

And...

*"...love to travel, take as many holidays as they possibly can...They will not travel any more with the membership but have joined because the membership will make their travelling much easier and a lot better."*

The Supplier's notes of the 2019 sale don't speak to any specific motivation on Mr and Mrs P's part for going ahead with that purchase. The notes focus on an issue Mr and Mrs P reference in their witness statement, which was the Supplier having offered them a free yacht holiday as an incentive to purchase. It turned out Mr and Mrs P were not eligible for this holiday and this was identified at the end of the sales process, leading to Mr and Mrs P to cancel and ask for compensation, having felt they'd been lied to. It seems the Supplier paid for their dinner that evening, and then the following day offered a £1,000 discount along with a holiday discount voucher. Mr and Mrs P then agreed to upgrade on these amended terms.

I think that where any particular motivation for Mr and Mrs P having bought or upgraded the membership comes to the surface in the evidence in this case, this was their desire to use the product for holidays. While this doesn't come across *clearly* for the purchase which is the subject of this complaint, I see no reason why their motivations (which I think *were* clear for the initial purchase) would have significantly changed for the May 2019 upgrade. And they don't say or suggest that the share in the Allocated Property was an important factor in their decision.

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 P 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 Mr and Mrs P 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 P'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 gone 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 P and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

## **Conclusion**

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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 P 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 Mr and Mrs P's complaint. I now invite the parties to the complaint to let me have any further submissions they'd like me to consider, by **15 August 2025**. I will then review the case again.

Will Culley  
**Ombudsman**