DRN-5989421

The complaint

Mr K'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 him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying claims under Section 75 of the CCA.

What happened

Mr K purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 22 January 2014 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 1,500 fractional points at a cost of £11,294 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr K 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 his membership term ends.

Mr K paid for his Fractional Club membership by taking finance of £11,294 from the Lender (the 'Credit Agreement').

Mr K – using a professional representative (the 'PR') – wrote to the Lender on 22 August 2019 (the 'Letter of Complaint') to raise a number of different concerns. Since then the PR has raised some further matters it says are relevant to the outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr K's concerns as a complaint and issued its final response letter on 18 September 2019, rejecting it on every ground.

I issued a provisional decision explaining why I didn't plan to uphold Mr K's complaint. 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 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 K was:

1. *told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true.*
2. *Told by the Supplier that he owned a 'fraction' of the Allocated Property when that was not true as it was owned by a trustee.*
3. *told by the Supplier that Fractional Club membership was an "investment" when that was not true.*

Neither the PR nor Mr K have set out in any detail what words and/or phrases where allegedly used by the Supplier to misrepresent Fractional Club for the reason given in points 1 or 2. However, the PR says that such representations were untrue because the Allocated Property was legally owned by a trustee and there was no indication of what duty of care it had to actively market and sell the property. Further, there is no guarantee that any sale will result at all, leaving prospective members to pay their annual management charge for an indefinite and unspecified period.

However, I cannot see why the phrases in points 1 or 2 above would have been untrue at the Time of Sale even if it was said. It seems to me to reflect the main thrust of the contract Mr K entered into. And while, under the relevant Fractional Club Rules, the sale of the Allocated Property could be postponed for up to two years by the 'Vendor'[1], longer than that if there were problems selling and the 'Owners'[2] agreed, or for an otherwise specified period provided there was unanimous agreement in writing from the Owners, that does not render the representation above untrue. So, I am not persuaded that the representation above constituted a false statement of fact even if it was made.

As for point 3, it does not strike me as a misrepresentation even if such a representation 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 – nor was it untrue to tell prospective members that they would receive some money when the allocated property is sold. After all, a share in an allocated property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give prospective members that interest, it did not change the fact that they acquired such an interest.

The PR has raised other matters as potential misrepresentations, but it seems to me that they are not allegations of the Supplier saying something that was untrue. Rather, it is that Mr K wasn't told things about the way the membership worked, for example, that the obligation to pay management fees could be passed on to their children. It seems to me that these are allegations that Mr K wasn't given all the information he needed at the Time of Sale, and I will deal with this further below.

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[1] Defined in the FPOC Rules as "CLC Resort Developments Limited".

[2] Defined in the FPOC Rules as "a purchaser who has entered into a Purchase Agreement and has been issued with a Fractional Rights Certificate (which shall include the Vendor for such period of time until the maximum number of Fractional Rights have been acquired)."

So, while I recognise that Mr K - 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 75 of the CCA: the Supplier's Breach of Contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mr K said that he could not holiday where and when he wanted to. That was framed, in the Letter of Complaint, as an alleged misrepresentation. However, on my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mr K states that the availability of holidays was/is subject to demand. I accept that he may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr K any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

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 K 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.*
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 K and the Lender.

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

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

They include, allegations that:

1. *Mr K was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.*
2. *the right checks weren't carried out before the Lender lent to Mr K.*
3. *The Credit Agreement was arranged by a broker acting outside of its authorisation.*
4. *The Lender failed to set out everything required by the CCA on the face of the Credit Agreement*

However, as things currently stand, none of these strike me as reasons why this complaint should succeed.

Mr K has said he was pressured into purchasing Fractional Club membership by several actions of the Supplier including not being allowed to take the relevant paperwork back to his apartment to read in his own time, being left in the presentation hall after all other customers had left and being told that if he didn't purchase Fractional Club membership the free holiday he was on would be cut short from seven nights to four. He said the presentation hall was also a long way from his apartment room and his family wouldn't have been able to find their way back on their own and had been in the hall for several hours.

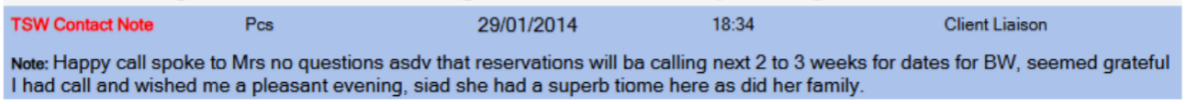
I balance Mr K's testimony in this regard against notes the Supplier said it made at the Time of Sale and which it has provided a record of. These say:

TSW Contact Note	Pcs	22/01/2014	18:20	Client Liaison
Note: Requested late checkout 3pm I have emailed Tony/Belinda to see if this can be arranged				
TSW Contact Note	Pcs	22/01/2014	18:14	Client Liaison
Note: Parents with grown up children in button up with them, leslie and beverley who also signed JM agreements, Daughter is corparate and commercial lawyer, so pretty sharp on legal docs so scrutinized docs as I went through them queried alternate use with bia nnual as it states in clause 21 of declaration use is only in occ year or this is what dec would suggest I clarified referring them to top oof page 5 in rules where it states that unused poits may be carried forward for max of 3 year, one of first things mr asked was thier a cooling off period, left this till the end, mr also required clarification of finance and the facility was available to pay off balance at any time, confirmed this was the case and pitched as normal, also he asked if he paid cash what would happen I went through that he would not recieve TSB in this case, the woman at the end stated that she was under the impression that the man fee was included in the cost, i conf this was not the case, however 20145 was incl, after discussion this was ok when they realised as this is every other year, consolidated this and gave them the option to be left as 14 days had been raised to also discuss man fees together but said all ok, generally all a bit subdued especially daughter, this they explained was because they had been here all day.				

The notes are consistent with Mr K's testimony in some regards as they show he had been in the presentation hall for a long time and was perhaps weary by the time he agreed to make his purchase. However, they also contradict what Mr K said insofar as they say that a 14 day right to cancel had been discussed and appear to suggest that the Supplier had offered to leave Mr K alone with his family to discuss matters before making a decision. The notes also suggest that the relevant paperwork was scrutinised by a member of Mr K's family in detail as opposed to Mr K's suggestion that no time was provided for this.

Clearly there is a conflict between the Supplier's notes and Mr K's testimony. I recognise that if the Supplier placed Mr K under the kind of pressure he said it did to purchase Fractional Club membership, then realistically the notes would be unlikely to reflect this as it could open them up to a claim of such nature. However, the notes are detailed and provide descriptions of things that appear to relate specifically to Mr K and his family which have not been substantially disputed by Mr K or the PR – save to say his daughter was a junior solicitor. The notes also appear to be contemporaneous. So, I think it's likely in this particular case that the notes do reflect some of the discussions Mr K had with the Supplier.

In thinking about whether Mr K was pressured into his purchase, I've also thought about his actions after the Time of Sale. The Supplier has provided notes of a call taken one week after the Time of Sale which say the following:



TSW Contact Note	Pcs	29/01/2014	18:34	Client Liaison

Note: Happy call spoke to Mrs no questions asdv that reservations will ba calling next 2 to 3 weeks for dates for BW, seemed grateful I had call and wished me a pleasant evening, siad she had a superb tiome here as did her family.

It's not clear whether 'Mrs' was Mr K's partner or one of his daughters. But there is no suggestion from this call note that Mr K was unhappy with his purchase at that point. I note also that in testimony provided to this service Mr K said he was told there would be a right to cancel his purchase, but that he wasn't told it would only be 14 days and didn't receive paperwork explaining this until after that period had expired. So, knowing that his ability to exercise choice had been impaired at the Time of Sale but knowing also he could cancel his purchase, I find it difficult to understand why Mr K wouldn't have done so as soon as he possibly could. Further, if Mr K didn't receive the paperwork explaining his 14 day cancellation period until after it had expired, I also find it difficult to understand why he didn't express his dissatisfaction with this at the time. From the Supplier's notes, the first record of him enquiring about the disposal or sale of his Fractional Club membership is not until April 2015, over a year after the purchase. And Mr K has said that he tried (albeit unsuccessfully) to book holidays.

And with all of that being the case, there is insufficient evidence to demonstrate that Mr K made the decision to purchase Fractional Club membership because his ability to exercise that choice was significantly impaired.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's 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 K was actually unaffordable before also concluding that he lost out as a result and then consider whether the credit relationship with the Lender was unfair to him for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr K.

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 K knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for him, 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 K suffering financial loss – such that I can say that the credit relationship in question was unfair on him 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 him, even if the loan wasn't arranged properly.

Similarly, the PR has not explained how, if it were true, Mr K not being offered a different lender to pay for Fractional Club membership caused him any unfairness or financial loss. Mr K was aware of the interest rate set out on the face of the Credit Agreement, as well as the term of the loan and the monthly repayments, so he understood what it was he was taking out. Further, I don't think the rate of interest was excessive, compared either to other rates available from other point-of-sale lenders or on the open market, so I can't say it would be fair or reasonable to tell the Lender to do anything because of this.

Overall, therefore, I don't think that Mr K's credit relationship with the Lender was rendered unfair to him under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR now says the credit relationship with the Lender was unfair to him. And that's the suggestion that Fractional Club membership was marketed and sold to him 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 am satisfied, that Mr K'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 and Mr K say that the Supplier did exactly that at the Time of Sale – saying, in summary, that he was 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 K the prospect of a financial return – whether or not, like all investments, that was more than what he 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.[3]

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.

[3] The PR has argued that Fractional Club membership amounted to an Unregulated Collective Investment Scheme, however this was considered and rejected in the judgment in *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).

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr K 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 him as an investment, i.e. told him or led him to believe that Fractional Club membership offered him 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 K, 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 K 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 K 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 K and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him 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 K decided to go ahead with his purchase. Indeed in testimony provided in a 'Statement of Truth' [4]in January 2021 Mr K said, "at the end of the presentation by the rep, we told the rep that we did not want to own a Fractional Investment on the basis that we owned a home in (XXX) where we could go on Sunny Holidays". This statement seems to suggest that neither something akin in Mr K's mind to property investment nor 'sunny holidays' interested him at that point in the day. So, what changed Mr K's mind?

In that same testimony Mr K goes on to say, "The rep would not accept this and kept repeating that it was clear we liked going on holidays to sunny climates and (the Supplier)

[4] This was a written statement signed by Mr K and dated 3 January 2021 and provided by the PR on 7 January 2021

was offering a variety of destinations so the rep could therefore not see why we would not want to join CLC and sign the purchase agreement"

And,

"We kept repeating we were not interested and the rep kept repeating the sentence (above) and also parts of his presentation relating to (the Supplier) being a exclusive club"

The statement also goes on to say "in hindsight we really did not know what we had purchased…It was not clear to us what a fractional was. The rep never clearly explained the purchase nor the structure of the fractional investment"".

Then later in the statement Mr K explains that he eventually signed having felt pressured into doing so.

I'm left to conclude from the evidence that it must have been something else other than the prospect of financial gain or profit that eventually persuaded Mr K to complete the purchase. He said that having told the Supplier he wasn't interested initially the rep kept emphasizing the holiday benefits such as the variety of destinations and being part of an exclusive club but it doesn't seem from the testimony that equal emphasis was placed on the prospect of a financial gain or profit at that point in his exchanges with the Supplier. And Mr K seems to place heavy emphasis on being pressured into purchasing, which I've already made findings on earlier.

That doesn't mean Mr K wasn'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 K doesn't persuade me that his purchase was motivated by his 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 he ultimately made.

The PR has pointed to other statements made by Mr K during the course of his complaint which it believes demonstrate that Mr K was motivated by the prospect of a profit or financial gain. However, I do not think these statements carry significant weight in this particular case.

For example, in a recent email sent on 12 September 2025 Mr K said "(the Supplier) repeatedly mentioned that the purchase was a 'fractional ownership' purchase; something that might appreciate in value or be resold later and therefore had investment potential and was NOT a timeshare contract". However, this is the first time that mention of something appreciating in value has been made and no such mention is made in any of Mr K's testimony provided before this. In fact Mr K's previous testimony would suggest that very little was explained to him about fractional ownership. So this recent evidence seems to contradict earlier statements by him. Given the earlier testimony was said to have been made (and provided to this service) closer to the time of sale, I think it is better evidence.

The PR also points to what it said were notes taken from when it spoke with Mr K in May 2019 (but provided in 2025) which said, "we didn't understand what we had signed for but we knew we had purchased an investment". However, in the statement of truth Mr K simply said we did not know what we had purchased". If making a profit or financial gain were important in Mr K's decision to purchase, I'd expect to see this reflected in subsequent testimony produced from these call notes, but it isn't. While Mr K may refer to Fractional Club membership as an investment at certain points in his testimony I do not recognise from these references that this was an important reason for his purchase. For example, even when Mr K says things such as he couldn't use the 'investment', it's in the context of not being able to book the holidays he wanted. Overall, I haven't found Mr K's testimony to be either persuasive or consistent.

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 K'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 he 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 K and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

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

The PR says that Mr K was not given sufficient information at the Time of Sale by the Supplier about membership, including about the ongoing costs of Fractional Club membership and the fact that Mr K's heirs could inherit these costs.

As I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I acknowledge that it is also possible that the Supplier did not give Mr K sufficient information, in good time, on the various charges he could have been subject to as Fractional Club members in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mr K nor the PR have persuaded me that he would not have pressed ahead with their purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the PR's argument that Mr K's heirs would inherit the on-going management charges, I fail to see how that could be the case or that it could have led to an unfairness that warrants a remedy.

Conclusion

In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim(s), and I am not persuaded that the Lender was party to a credit relationship with Mr K under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA – nor do I see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

The Lender accepted my provisional decision.

The PR did not accept it and provided further comments and evidence for consideration.

Having received the relevant responses from both parties, I'm now finalising my decision.

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.

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. But I would add that the following regulatory rules/guidance are also relevant:

The Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

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.

The PR's further comments and evidence in response to the provisional decision in the main relate to the issue of whether the credit relationship between Mr K and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr K as an investment at the Time of Sale and whether Mr K was pressured into purchasing Fractional Club membership

As outlined in my provisional decision, the PR originally raised various other points of complaint, all of which I addressed at that time. But they didn't make any further comments in relation to those in their response to my provisional decision. Indeed, they haven't said they disagree 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 the PR's points raised in response.

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

The PR has provided its further thoughts as to Mr K's likely motivations for purchasing Fractional Club membership. I recognise it has interpreted Mr K's testimony differently to how I have and thinks it points to him having been motivated by the prospect of a financial gain from Fractional Club membership.

In my provisional decision I explained the reasons why I didn't think Mr K's purchase was motivated by the prospect of a financial gain (i.e., a profit). And although I have carefully considered the PR's arguments in response to this, I'm not persuaded the conclusion I reached on this point was unfair or unreasonable.

So, ultimately, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr K's purchasing decision. And for that reason, I do not think the credit relationship between Mr K and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

I've also thought about the PR's comments in relation to the pressure it said Mr K was put under to purchase Fractional Club membership. Again however, I'm not persuaded the conclusion I reached on this point in my provisional decision was unfair or unreasonable. While I recognised Mr K may have been weary from a lengthy presentation, I did not conclude he had purchased Fractional Club membership because his ability to make a choice had been removed. I remain unpersuaded Mr K's relationship with the Lender was unfair in relation to this point for the same reasons I explained in my provisional decision.

S140A conclusion

Given all of the factors I've looked at in this part of my decision, including the relevant relationships, arrangements and payments between Mr K, the Lender and the Supplier and having taken all of them into account, I'm not persuaded that the credit relationship between Mr K and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

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 K's Section 75 claim(s), and I am not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement that was unfair to him 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 him.

My final decision

For the reasons I've explained, I do not uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or

reject my decision before 30 December 2025.

Michael Ball
Ombudsman