DRN-6007914

The complaint

Mr and Mrs T'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.

What happened

Mr and Mrs T were existing members of timeshare arrangements from a timeshare provider (the 'Supplier'). They held two types of membership:

- The Vacation Club ('VC') – this was a points-based timeshare where members held a certain number of points which could be exchanged each year for holiday accommodation from the Supplier's portfolio of resorts. Each accommodation cost a different number of points depending on its size, location and time of year.
- The Fractional Property Owners Club ('FPOC') – this was similar to VC, with the main difference being that it was asset-backed. It included a share in the net sale proceeds of a property named on the member's purchase agreement (the 'Allocated Property') after their membership term ends.

Neither of these memberships are the subject of this complaint and are included for background purposes only.

On 21 April 2015 (the 'Time of Sale 1') Mr and Mrs T purchased membership of a new timeshare (the 'Signature Suites 1') from the Supplier. They entered into an agreement with the Supplier to buy 1,650 fractional points (the 'Purchase Agreement'), and after trading in their existing FPOC membership, they ended up paying £9,020 for membership of the Signature Suites.

Like the FPOC, Signature Suites 1 membership was asset backed, so in addition to holiday rights, it included a share in the net sale proceeds of the Allocated Property named on their Purchase Agreement after their membership term ends. But unlike VC and FPOC, the Signature Suites membership also provided a guaranteed week's accommodation in the Allocated Property. This particular Purchase Agreement gave them the right to stay for one week in the Allocated Property on a bi-annual basis, on even years, commencing in 2016.

Mr and Mrs T paid for their Signature Suites 1 membership by taking finance of £9,020 from the Lender in their joint names (the 'Credit Agreement 1').

Then, on 9 February 2016 (the 'Time of Sale 2') Mr and Mrs T made further purchases of Signature Suites memberships:

- They swapped their Signature Suites 1 membership for a different property and week. ('Signature Suites 2'). This swap cost them £499 with their membership remaining bi-annual on even years.
- They also made a new purchase ('Signature Suites 3') by trading in their VC points and

paying an additional £10,204. This provided them a week's guaranteed accommodation in their new Allocated Property on a bi-annual basis, on odd years.

Mr and Mrs T paid for their Signature Suites 2 and 3 memberships by taking finance of £17,179 (the 'Credit Agreement 2') from the Lender in their joint names. This also consolidated the outstanding balance of a loan they had with another lender.

So, as a result of these purchases, Mr and Mrs T had two Signature Suites memberships, with each providing a guaranteed week's accommodation on alternate years. They also had two loans with the Lender to pay for these memberships, running concurrently.

Mr and Mrs T – using a professional representative (the 'PR') – wrote to the Lender on 26 September 2019 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time(s) of Sale giving them claims against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. A breach of Contract by the Supplier giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
3. The Lender being party to unfair credit relationships under the Credit Agreement(s) and related Purchase Agreement(s) for the purposes of Section 140A of the CCA.
4. The decisions to lend being irresponsible because the Lender did not carry out the right creditworthiness assessment.

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

Mr and Mrs T say that the Supplier made a number of pre-contractual misrepresentations at the Time(s) of Sale – namely that the Supplier:

- Told them that Signature Suites memberships had a guaranteed end date, specifically after 19 years, after which they would have no further legal liability to the Supplier under or in respect of the Scheme, when that was not true.
- Told them that they were buying an interest in a specific piece of "real property" when that was not true.
- Told them that the Signature Suites memberships were an "investment" when that was not true.

Mr and Mrs T say that they have claims against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, they have like claims against the Lender, who, with the Supplier, is jointly and severally liable to Mr and Mrs T.

(2) Section 75 of the CCA: the Supplier's breach of contract

Mr and Mrs T say that the Supplier breached the Purchase Agreement(s) because they found it difficult to book the holidays they wanted, when they wanted. They also say the resorts and properties were supposed to be exclusive to members, but they are available to anyone to book on the internet.

As a result of the above, Mr and Mrs T say that they have a breach of contract claim against the Supplier, and therefore, under Section 75 of the CCA, they have a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr and Mrs T.

(3) Section 140A of the CCA: the Lender's participation in an unfair credit relationship

The Letter of Complaint set out several reasons why Mr and Mrs T say that the credit relationships between them and the Lender were unfair to them under Section 140A of the CCA. In summary, they include the following:

1. The contractual terms setting out (i) the duration of their Signature Suites membership and/or (ii) the obligation to pay annual management charges for the duration of their memberships were unfair contract terms under the Consumer Rights Act 2015 ('CRA').
2. The Supplier's sales presentations at the Time(s) of Sale included misleading actions and/or misleading omissions under the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations') as well as a prohibited practice under Schedule 1 of those Regulations.
3. The decisions to lend were irresponsible because the Lender didn't carry out the right creditworthiness assessment.
4. The Supplier failed to provide an adequate or transparent explanation to Mr and Mrs T as to the features of the agreements which may have made the credit unsuitable for them, or have 'a significant adverse effect which they would be unlikely to foresee', especially given the length of the term, their age and high interest and total charge for the credit that was provided.

The Lender dealt with Mr and Mrs T's concerns as a complaint and issued its final response letter on 5 November 2019, rejecting it on every ground.

Mr and Mrs T then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

The Investigator thought that the Supplier had marketed and sold the Signature Suites memberships as an investment to Mr and Mrs T at the Time(s) of Sale in breach of Regulation 14(3) of the Timeshare Regulations. And given the impact of that breach on their purchasing decisions, the Investigator concluded that the credit relationships between the Lender and Mr and Mrs T were rendered unfair to them for the purposes of section 140A of the CCA.

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

The provisional decision

Having considered everything, I didn't think Mr and Mrs T's complaint ought to be upheld. So, I set out my initial thoughts in a provisional decision (the 'PD'). 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.

But 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

As both sides may already know, a claim against the Lender under Section 75 essentially mirrors the claim Mr and Mrs T could make against the Supplier. Certain conditions must be met if this protection is engaged – which are set out in the CCA. The Lender does not dispute that the relevant conditions are met in this complaint, and I'm satisfied that they are.

This part of the complaint was made for several reasons that I set out at the start of this decision. They include the suggestion that the Signature Suites memberships had been misrepresented by the Supplier because Mr and Mrs T were told that they had a fixed term and a guaranteed end date, when that was not true. But I can't actually see that what has allegedly been said here is untrue. I've not seen anything which makes me think that the Allocated Property(s) relating to Signature Suite 2 and 3 (as they are the only current memberships) would not be able to be sold at the conclusion of the contract period. The Terms and Conditions set out that the title to each property is held by independent trustees, the sale of the Allocated Property can only be carried out by the Trustees on or after the proposed sale date, and the Allocated Property cannot be removed from the trust before that sale date. What's more, the sale date can only be delayed for up to two years by the unanimous written consent of all fractional owners, in which Mr and Mrs T are included.

The Letter of Complaint also includes the suggestion that the Signature Suites memberships had been misrepresented by the Supplier because Mr and Mrs T were told that they were buying an interest in a specific piece of "real property" when that was not true. However, telling prospective members that they were buying a fraction or share of one of the Supplier's properties was not untrue. Mr and Mrs T's share in the Allocated Property(s) 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 them that interest, it did not change the fact that they acquired such an interest.

There is also the allegation that the Signature Suites memberships were sold as an investment, which I address further below. For the reasons I'll explain, had they been told their Signature Suites membership were investments (and I make no finding on that point here), that would not have been untrue.

What's more, as there's nothing else on file that persuades me there were any false statements of existing fact made to Mr and Mrs T by the Supplier at the Time(s) of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reasons they allege.

Therefore, for these reasons, I do not think the Lender is liable to pay Mr and Mrs T any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claims in question.

Section 75 of the CCA: the Supplier's breach of contract

I've already summarised how Section 75 of the CCA works and why it gives Mr and Mrs T a right of recourse against the Lender. So, it isn't necessary to repeat that here.

Although not specifically set out as a claim of breach of contract, the Letter of Complaint presented the difficulties that Mr and Mrs T say they had experienced with their Signature Suites memberships.

For instance, Mr and Mrs T say that they could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that they consider that the Supplier was not

living up to its end of the bargain, and had breached the Purchase Agreement. In the Letter of Complaint, the PR gives the example of Mr and Mrs T being unable to take holidays in Monterey Royale in Tenerife, and never being able to take holidays when they wanted them, like over Christmas. But I think Mr and Mrs T and/or the PR have made an error here. I say that because the Signature Suites membership, unlike the FPOC and VC memberships they held previously, had guaranteed availability on their selected weeks. So had Mr and Mrs T wished to stay in Monterey Royale (which wasn't one of their Allocated Property(s)) and/or over Christmas (which wasn't one of their weeks) they would have had to book this as an addition to their membership. And as additional holidays and accommodation don't appear to be a contractual right under the Purchase Agreement(s) I cannot see how there is a breach of contract here.

Mr and Mrs T also say that the Supplier breached the Purchase Agreement because they say the resorts are not exclusive to members. However, I cannot see any clause in the contractual documents which state that the resorts as a whole are exclusive to members. And, from what I can see, it seems that Signature Suites membership, and the right to stay in those Allocated Property(s) is exclusive to members. And neither Mr and Mrs T nor the PR have said, suggested or provided evidence to demonstrate that they have been unable to use their Signature Suites memberships to holiday due to a lack of exclusivity.

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mr and Mrs T 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 when it dealt with the Section 75 claim in question.

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

I have already explained why I am not persuaded that the contracts entered into by Mr and Mrs T were misrepresented or breached by the Supplier in a way that makes for successful claims under Section 75 of the CCA and outcome in this complaint. But Mr and Mrs T also say that the credit relationships between them and the Lender are unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time(s) of Sale that they have concerns about. It is those concerns that I explore here.

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

1. *The Supplier's sales and marketing practices at the Time(s) of Sale– which includes training material that I think is likely to be relevant to the sale;*
2. *The provision of information by the Supplier at the Time(s) 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(s) of Sale; and*
4. *The inherent probabilities of the sale given its circumstances.*

I have then considered the impact of these on the fairness of the credit relationships between Mr and Mrs T and the Lender.

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

Mr and Mrs T's complaint about the Lender being party to unfair credit relationships was also made for several reasons, all of which I set out at the start of this decision.

They include the allegation that the Supplier misled Mr and Mrs T and carried on unfair commercial practices which were prohibited under the CPUT Regulations. But given the limited evidence in this complaint, I am not persuaded that anything done or not done by the Supplier at either Time(s) of Sale was prohibited under the CPUT Regulations.

The PR also says that the right checks weren't carried out before the Lender lent to Mr and Mrs T at either of the Time(s) of Sale. 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 on either occasion (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs T 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. Again, from the information provided, I am not satisfied that the lending was unaffordable for Mr and Mrs T. If there is any further information on this (or any other points raised in this provisional decision) that Mr and Mrs T wish to provide, I would invite them to do so in response to this provisional decision.

I'm not persuaded, therefore, that Mr and Mrs T's credit relationships with the Lender were rendered unfair to them under Section 140A for either of the reasons above. But there is another reason, perhaps the main reason, why they say their credit relationships with the Lender were unfair to them. And that's the suggestion that the Signature Suites memberships were marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

Were the Signature Suites memberships marketed and sold at the Time(s) of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations?

The Lender does not dispute, and I am satisfied, that Mr and Mrs T's Signature Suites memberships met the definition of a "timeshare contract" and both were a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling membership of the Signature Suites 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. So, that is what I have considered next.

The term "investment" is not defined in the Timeshare Regulations. In Shawbrook & BPF v FOS[1], the parties agreed that, by reference to the decided authorities, "an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit" at [56]. I will use the same definition.

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[1] *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin)

Mr and Mrs T's share in the Allocated Property(s) relating to each of the three Signature Suites memberships clearly, in my view, constituted investments as they offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But the fact that a Signature Suites 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 Signature Suites. They just regulated how such products were marketed and sold.

To conclude, therefore, that any or all of the Signature Suites memberships were marketed or sold to Mr and Mrs T 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 the membership to them as an investment, i.e. told them or led them to believe that Signature Suites 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 the Signature Suites memberships were marketed and/or sold by the Supplier at the Time(s) 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 Signature Suites as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs T, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. There were, for instance, disclaimers in the contemporaneous paperwork that state that Signature Suites membership was not sold to Mr and Mrs T as an investment. So, it's possible that Signature Suites membership wasn't marketed or sold to them as an investment in breach of Regulation 14(3).

On the other hand, I acknowledge that the Supplier's training material left open the possibility that the sales representative may have positioned Signature Suites membership as an investment.

And here I need to take into account the testimony provided to this Service from Mr and Mrs T. This was sent to us on 24 September 2023. It is unsigned and undated, but the PR has sent a screenshot from its systems which shows it made a call to Mr and Mrs T to discuss the statement on 17 May 2019. So, I am satisfied that it was likely made on or around this date.

The statement sets out Mr and Mrs T's recollection of their entire relationship with the Supplier and encompasses the three different types of membership they had. When discussing how Signature Suites 1 was sold to them, they say:

> *"In April 2015, we were at [the Supplier's] Mijas resort when we were invited to another sales presentation, which took place on the 6th May 2015…*
>
> *We then returned to the sales suite, where another long sales presentation began, about their product, called Fractional Property Ownership. This involved buying shares of a week each, in an actual property, which would be sold after 19 years, and the proceeds of sales would be split between the people that owned the shares/weeks.*
>
> *This appealed to us, as unlike the Points Membership, it had an actual end date, when we could finally leave [the Supplier].*

Also, we were told that it was "an investment" which would be likely to increase in value over the term…

When we purchased the Signature, we were told that our investment would probably grow, and we should receive a share of a profit when the property was sold."

And as regards their purchase of Signature Suites 2 and 3 they say:

"On the 6th of June 2016, we were on holidays at [the Supplier's] Mijas Costa resort in Spain when we were invited to another presentation…

We still had some Points left in the Vacation Club, so we discussed trading them in for a week in Castillo Del Rey resort, in Mijas Costa. At the same time, we discussed trading in our week in Unit 757 (week 16), San Diego Suites Signature Collection, for one week in Unit 725, San Diego Suites Signature Collection."

So, it seems from what Mr and Mrs T are saying, the Supplier positioned Signature Suites membership, in particular on the first occasion they bought it, as an investment that would likely increase in value. So, I accept that it's equally possible that Signature Suites membership was marketed and sold to Mr and Mrs T 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 is not necessary to make a formal finding on that particular issue for the purposes of this decision.

Were either or both of the credit relationships between the Lender and Mr and Mrs T rendered unfair to them?

As the Supreme Court's judgment in Plevin makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

And in light of what the courts had to say in Carney and Kerrigan, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs T and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

As I've said, with regards to the sale of Signature Suites 1, Mr and Mrs T have said in their statement that:

"…we were told that it was "an investment" which would be likely to increase in value over the term…

When we purchased the Signature, we were told that our investment would probably grow, and we should receive a share of a profit when the property was sold."

But this doesn't persuade me that the potential for a profit was material to the decision they made to purchase the Signature Suites memberships. I'll explain.

Mr and Mrs T were longstanding members of timeshare products from the Supplier. So, they were clearly interested in holidays, and specifically the type of holiday provided by the Supplier. They were already holders of both a VC membership and an FPOC membership by the Time of Sale 1, and from their testimony they were clearly dissatisfied with how these

memberships were working and what they were providing in terms of holidays. They have been quite specific about being unable to book the resort they wanted under these existing memberships. But as I've said, Signature Suites offered distinct differences to both VC and FPOC memberships – in particular, it offered guaranteed availability in their Allocated Property in the week they had bought. So, as opposed to their VC and FPOC membership (which Mr and Mrs T were dissatisfied with due to both availability issues and the length of membership term) there would be no issue with availability when it came to a Signature Suite membership.

The other difference to VC membership, was it had a defined and significantly shorter membership term. And Mr and Mrs T have said in their statement that this was attractive to them:

> *"This appealed to us, as unlike the Points Membership, it had an actual end date, when we could finally leave [the Supplier]."*

Another aspect I have considered, when thinking about their motivations to make the purchases, was what they did at Time of Sale 2. Signature Suites 1 was a bi-annual membership, allowing them to stay in the property in even-numbered years from 2016 onwards. At Time of Sale 2 they swapped this membership for a similar one (Signature Suites 2) and bought an additional bi-annual membership (Signature Suites 3). This third membership allowed them to stay in a set week every odd-numbered year. So, this additional purchase meant they were able to take a holiday every year.

So, given that they were dissatisfied with how their VC and FPOC memberships were working and the difficulties they were having when trying to secure holidays with them, and that Signature Suites membership offered them guaranteed accommodation in the property of their choice with a shorter fixed membership term, I think they would have likely pressed ahead with their purchases even if there was a breach of Regulation 14(3) by the Supplier when it sold the memberships to them. After all, when describing how they were sold, the only thing that has been mentioned as being attractive to them was the shorter membership term. They have described what they were told about the way the investment element worked, but unlike the shorter membership term, they have not said that this was a motivation for them. And I find this surprising if, as they now say, the investment element of the memberships was a driver for the purchases.

So, on balance, given the advantages of upgrading to Signature Suites from VC and FPOC, I think they would have bought the memberships whether or not there had been a breach of Regulation 14(3) by the Supplier in the way it sold and/or marketed the Signature Suites memberships.

It follows, as I think they would have bought the memberships and taken out the relevant credit agreements anyway, that I'm not persuaded that the associated credit relationships between Mr and Mrs T and the Lender were rendered unfair to them for the purposes of Section 140A of the CCA.

<u>The provision of information by the Supplier at the Time of Sale</u>

It is clear from the submissions of everyone involved in this complaint that there was a lot of information passed between the Supplier and Mr and Mrs T when they purchased each membership of the Signature Suites at the Time(s) of Sale. But the PR says that the Supplier failed to provide them with all of the information they needed to make an informed decision.

The PR also says that the contractual terms governing the duration of Signature Suites membership and the obligation to pay management charges for that duration were unfair

contract terms under the CRA.[2]

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

However, as I've said before, the Supreme Court made it clear in Plevin that it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A of the CCA. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

Unfair terms

The PR said that the Purchase Agreement(s) contain unfair contract terms (under the UTCCR/CRA) in relation to the duration of membership and the obligation to pay management charges for that duration.

To conclude that a term in one or all of the Purchase Agreement(s) rendered the credit relationship between Mr and Mrs T and the Lender unfair to them, I'd have to see that the term was unfair under the CRA, and that the term was actually operated against Mr and Mrs T in practice.

In other words, it's important to consider what real-world consequences, in terms of harm or prejudice to Mr and Mrs T, have flowed from such a term, because those consequences are relevant to an assessment of unfairness under Section 140A. For example, the judge in Link Financial v Wilson [2014] EWHC 252 (Ch) attached importance to the question of how an unfair term had been operated in practice: see [46].

Having considered everything that has been submitted, it seems unlikely to me that the contract term(s) cited by Mr and Mrs T have led to any unfairness in the credit relationship between them and the Lender for the purposes of Section 140A of the CCA. I say this because I cannot actually see how they have been unfair. The obligation to pay annual management charges is set out in the contractual documentation, as is the term of the membership. And given how long Mr and Mrs T had been timeshare members I think they would have been very familiar with the requirement to pay annual management charges and the reasons for them. The PR also hasn't explained why exactly they feel these term(s) cause an unfairness in any event.

The provision of information at the Time(s) of Sale

The Letter of Complaint also says Mr and Mrs T weren't given a transparent explanation as to the features of the loan agreement(s) which may have made them unsuitable for them or have a significant adverse effect which they would be unlikely to foresee, especially given the length of the term, their age and high interest and total charge for the credit provided.

But the PR hasn't explained what the particular risks or features are that they're referring to

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[2] The CRA only applied from contracts entered into on or after 1 October 2015. The applicable legislation for contacts before this time was the UTCCR. I will consider the appropriate legislation in relation to Time of Sale 1 and 2.

here, or why these would have had an adverse effect on Mr and Mrs T. They also haven't described what they feel should have been explained or what information should have been given that wasn't. They've mentioned the length of the loan, their age and the interest rate, but haven't given any reason as to why these are unfair in this particular case or why these cause the credit relationship to be unfair.

So, while it's possible the Supplier didn't give Mr and Mrs T sufficient information, in good time, on the above elements of their memberships in order to satisfy its regulatory responsibilities at the Time(s) of Sale, I haven't currently seen enough to persuade me that this, alone, rendered either of Mr and Mrs T's credit relationships with the Lender unfair to them.

Moreover, as I haven't seen anything else to suggest that there are any other reasons why either of the credit relationships between the Lender and Mr and Mrs T were unfair to them because of an information failing by the Supplier, I'm not persuaded they were.

So, given the facts and circumstances of this complaint, I am not persuaded that the Supplier's alleged breaches of the CPUT Regulations and the CRA are likely to have prejudiced Mr and Mrs T's purchasing decisions at the Time(s) of Sale and rendered either of their credit relationships with the Lender unfair to them for the purposes of Section 140A of the CCA.

Section 140A: Conclusion

In conclusion, therefore, given all of the facts and circumstances of this complaint, I don't think either of the credit relationships between the Lender and Mr and Mrs T were unfair to them for the purposes of Section 140A. And taking everything into account, I think it's fair and reasonable to reject this aspect of the complaint on that basis.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs T Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with them under either of the Credit Agreement(s) 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."

The responses to my provisional decision

The Lender did not respond to the PD, but the PR, on behalf of Mr and Mrs T, did. It gave a comprehensive response to the PD, explaining why it did not agree, and I will address its response later in this decision. But the PR also said that the PD had not addressed whether the payments of commission by the Lender to the Supplier, and the non-disclosure of this commercial arrangement had also caused the associated credit relationships to be unfair to Mr and Mrs T.

On 24 November 2025 I wrote to both sides setting out my provisional thoughts on the commission arrangements between the Lender and the Supplier. In summary, I said that neither of the transactions struck me as ones with features that the Supplier had an obligation of 'loyalty' to Mr and Mrs T when arranging the Credit Agreement(s) and thus a fiduciary duty. I also hadn't seen anything to suggest that the Lender and the Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr and Mrs T, nor that any commission arrangement gave the Supplier a choice over the interest rate offered to Mr and Mrs T on either occasion. And in Mr and Mrs T's case, the

Lender had supplied information demonstrating that no commission was paid in relation to either of the arrangements involving them. With that being the case, I wasn't persuaded this position could have led to an inequality of knowledge capable of rendering the credit relationships unfair to Mr and Mrs T such that the Lender needed to take any action in redress.

The PR didn't accept the proposed outcome. It submitted further comments and evidence in support of Mr and Mrs T's position.

Having received and reviewed these, I'm now proceeding with my final decision. But again, 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.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

The legal and regulatory context

The legal and regulatory context that I think is relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in previous correspondence with the parties. So there's no need for me to set this out again in detail here. I simply remind the parties that our rules[3] say that in considering what is fair and reasonable in all the circumstances of the complaint, I will take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

What I've decided – and why

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

After considering the case afresh and having regard for what's been said in response to my provisional decision and in my subsequent correspondence, I find it offers no persuasive reason to depart from the conclusions I've previously set out. I'll explain why.

The PR originally raised various points of complaint, such as those giving rise to Mr and Mrs T's Section 75 claims, which I addressed in my provisional decision. In its response, it hasn't made any further comments in relation to most of its original points, or said anything that leads me to think it disagrees with my provisional conclusions in relation to those points. So, I'll focus here on the points the PR *has* made in response.

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

The PR's response to my provisional decision relates mainly to the issue of whether the credit relationship between Mr and Mrs T and the Lender was unfair *per* Section 140A of the CCA. In particular, the PR has provided more comment in relation to whether the membership was sold to Mr and Mrs T as an investment at the Time of Sale. It has also made further submissions in support of its position that the payment of a commission by the Lender to the Supplier led to unfair credit relationships between the Lender and Mr and

[3] Financial Conduct Authority ("FCA") Handbook – DISP 3.6.4R ("R" denotes a rule).

Mrs T.

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

The PR has questioned whether my provisional conclusions run contrary to precedent decisions issued by my ombudsman colleagues and the judgment handed down in *Shawbrook and BPF v FOS*. I don't believe they do. The judgment referred to did not make a blanket finding that all products of the type Mr and Mrs T purchased were mis-sold in the way the PR appears to be suggesting. And any complaint needs to be considered in the light of its specific individual circumstances.

I remind the PR that in my provisional decision I accepted the possibility that the Signature Suites memberships were marketed and/or sold to Mr and Mrs T as investments, in breach of Regulation 14(3). I went on to explain that relevant case law[4] indicates that in considering the question of relief for any resultant unfairness in the credit relationship(s), I needed to take into account any material impact of such a breach on Mr and Mrs T's decision whether to enter into the Purchase and Credit Agreements. It doesn't strike me that doing so flies in the face of either the handed down judgment or previous decisions the PR has mentioned.

While the PR has referred me to Mr and Mrs T's testimony and the Supplier's training materials, I have already considered these and what was said. And I set out in my provisional decision the reasons why I didn't find that evidence sufficiently persuasive that Mr and Mrs T's purchasing decisions would have been any different, given the other motivational factors they had described. Having re-examined Mr and Mrs T's statement that remains my view, for the reasons previously given.

So, as I said before, whether or not the Supplier marketed or sold the Signature Suites memberships as an investment in breach of Regulation 14(3), I'm not persuaded Mr and Mrs T's decision to make the purchases were materially impacted by the prospect of a financial gain. It follows that I find the credit relationships between Mr and Mrs T and the Lender were not rendered unfair to them for this reason.

The provision of information by the Supplier at the Time(s) of Sale

As I've noted, the PR has disagreed with my provisional conclusions on whether the Lender should pay redress because of unfair credit relationships arising in connection with commission arrangements between the Lender and the Supplier. The PR says, in summary, that when the overall circumstances of those arrangements are considered in the round, each credit relationship was plainly unfair. In support of this position the PR has expressed, among other things, that:

- The provisional decision doesn't properly apply the Supreme Court's judgment in *'Hopcraft, Johnson and Wrench'*[5], which concluded a range of factors informed whether a credit relationship between a consumer and a lender was unfair.
- A conflict of interest existed on the part of the Supplier, who provided neither independent nor competent explanation of the credit.
- Failure to disclose payment of commission – irrespective of the size of any payment - was a regulatory breach that goes to the heart of fairness.

I appreciate the time the PR has taken to put together its submissions on behalf of Mr and

[4] *Carney* and *Kerrigan*
[5] *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33

Mrs T. But I don't find what it has said offers persuasive grounds for me to reach a different conclusion on this issue.

I've previously set out my thoughts on any impact the Supreme Court's conclusions in *Hopcraft, Johnson and Wrench* has on Mr and Mrs T's arguments that their credit relationships with the Lender were unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

The PR's response doesn't offer anything that leads me to think that, for the most part, any of the factors it has referenced were in fact at play in Mr and Mrs T's case. It hasn't, for example, provided evidence to show the existence of commercial or contractual ties that were concealed from Mr and Mrs T, any persuasive reasons to conclude that the Supplier's role was that of advisor to Mr and Mrs T, or to show that any other conflict of interest arose from the roles the Supplier did perform.

In responding, the PR has emphasised the regulatory breaches connected with a failure to disclose a commission payment. I have already set out why, in my view, this doesn't automatically lead to an unfair credit relationship for which the Lender needs to offer redress, and I repeat, no commission was paid in relation to either Credit Agreement. I remain of that view, the PR's submissions notwithstanding.

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 remain unpersuaded that the credit relationships between Mr and Mrs T and the Lender under the Credit Agreement(s) and related Purchase Agreement(s) were unfair to them such that they warrant the Lender offering any redress.

Conclusion

After careful reconsideration of the facts and circumstances of this complaint, I adopt my provisional conclusions as part of my final decision. For the reasons I've given above and in my earlier correspondence I've mentioned:

- I don't think the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs T's Section 75 claims.
- I'm not persuaded that the Lender was party to credit relationships with Mr and Mrs T that were unfair to them for the purposes of Section 140A of the CCA.

Having taken everything into account, I see no other reason why it would be fair or reasonable for me to direct the Lender to compensate Mr and Mrs T.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs T to accept or reject my decision before 6 January 2026.

Chris Riggs
Ombudsman