

The complaint

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

What happened

Mr and Mrs S were existing members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 29 September 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2,400 fractional points at a cost of £32,465 (the 'Purchase Agreement'), but after trading in their existing 1,816 fractional points, they ended up paying £8,857 for their Fractional Club membership.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs S more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr and Mrs S paid for their Fractional Club membership by taking finance of £8,857 from the Lender (the 'Credit Agreement') in their joint names.

Mr and Mrs S – using a professional representative (the 'PR') – wrote to the Lender on 11 July 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender did not respond to Mr and Mrs S's complaint, so the PR referred their complaint to the Financial Ombudsman Service.

When contacted by this Service, the Lender said it had already answered a complaint about Mr and Mrs S's purchase of the Fractional Club in 2019, so it was too late to refer the matter. This was considered by an Investigator at this Service who found that the Lender's complaint response related to an unconnected timeshare sale, and a complaint about the Time of Sale and the Fractional Club had not been made by Mr and Mrs S until July 2022.

The Lender maintained that it thought Mr and Mrs S's referral to this Service had been made too late as it had answered the complaint in 2019. An Ombudsman considered the circumstances of the complaint alongside the rules that set out what complaints this Service can and cannot consider, and decided that Mr and Mrs S's complaint was in the jurisdiction of this Service, because their 2022 Letter of Complaint was a *new* complaint.

So, Mr and Mrs S's complaint was assessed by the Investigator who, having considered the information on file, rejected the complaint on its merits.

Mr and Mrs S 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 the complaint ought to be upheld. I issued a provisional decision (the 'PD') setting out my initial thoughts on the merits of Mr and Mrs S's complaint.

In 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.

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.

Mr and Mrs S's claims under Section 75 of the CCA

In the Letter of Complaint to the Lender, Mr and Mrs S said that the Supplier, at the Time of Sale, made misrepresentations upon which they relied when making their decision to purchase the Fractional Club membership. They also said that they were unable to book their chosen holidays due to problems with availability, which seems to be a complaint that the Supplier was not living up to its end of the bargain, and thus breaching the terms of the Purchase Agreement.

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.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mr and Mrs S could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase. The purchase price must be more than £100 but no more than £30,000. So, if the purchase price of the product is in excess of £30,000 (irrespective of any trade-in allowance), a claim under Section 75 cannot succeed. But where the purchase price is in excess of £30,000, a claim can be considered under Section 75A of the CCA. But a claim under 75A can only relate to a 'breach of contract' – misrepresentation isn't included. I have gone on to say what I think this means in respect of Mr and Mrs S's Section 75 claims.

The purchase price of Mr and Mrs S's Fractional Club was £32,465. As this is in excess of £30,000 I am satisfied that Mr and Mrs S's claim under Section 75 cannot succeed.

But as I've said, Section 75A of the CCA allows for a claim should the price of the purchase be over £30,000, but only in relation to a breach of contract by the Supplier.

Mr and Mrs S say that they could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement. So I'm satisfied the claim includes

an element which is an alleged breach of contract, so this could potentially be considered under Section 75A. There are other criteria in order for Section 75A to apply, but I don't consider that I need to make a finding on that because, as I go on to explain below, whether it be under Section 75 or 75A, I do not think that the Lender was unfair or unreasonable when it did not accept Mr and Mrs S's claim.

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 and Mrs S states that the availability of holidays was/is subject to demand. So, whilst I accept that they may not have been able to take certain holidays, I have not seen enough to persuade me that the Supplier has breached the terms of the Purchase Agreement.

The PR also says on Mr and Mrs S's behalf that the Supplier breached the Purchase Agreement because it went into liquidation. And if certain parts of the Supplier's business were put into administration, I can understand why the PR is alleging that there was a breach of the Purchase Agreement as a result. However, neither Mr and Mrs S nor the PR have said, suggested or provided evidence to demonstrate that due to the liquidation they are no longer:

- 1. Members of the Fractional Club;*
- 2. able to use their Fractional Club membership to holiday in the same way they could initially; and*
- 3. entitled to a share in the net sales proceeds of the Allocated Property when their Fractional Club membership ends.*

Section 75 - conclusion

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr and Mrs S any compensation for misrepresentation or a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in not accepting Mr and Mrs S's claims under Section 75 of the CCA, so it doesn't need to do anything in this regard.

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

I've already explained why I'm not persuaded that a claim under Section 75 and/or 75A of the CCA ought to succeed. But there are 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 S and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

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

4. *The inherent probabilities of the sale given its circumstances.*

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

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

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

The PR says, for instance that:

- 1. Fractional Club was misrepresented to Mr and Mrs S at the Time of Sale;*
- 2. the right checks weren't carried out before the Lender lent to Mr and Mrs S; and*
- 3. Mr and Mrs S were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.*

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

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 S were:

- Told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true; and*
- Told by the Supplier that Fractional Club membership was an "investment" when that was not true.*

However, 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. After all, a share in an allocated property was, by its very nature, an investment. And while, as I understand it, the sale of the Allocated Property could be postponed in certain circumstances according to the Fractional Club Rules, Mr and Mrs S say little to nothing to persuade me that they were given a guarantee by the Supplier that the Allocated Property would be sold on a specific date when such a promise would have been impossible to stand by given the inevitable uncertainty of selling property some way into the future. And as there's nothing else on file to support the PR's allegation, I'm not persuaded that there was a representation by the Supplier on the issue in question that constituted a false statement of fact.

So, while I recognise that Mr and Mrs S and the PR have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at whether an unfairness in the associated credit relationship has been caused, 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 Mr and Mrs S's credit relationship was rendered unfair to them for reasons of misrepresentation.

I also 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 and Mrs S was actually unaffordable, before also concluding that they lost out as a result, and then consider whether the credit relationship with the Lender was unfair to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr and Mrs S.

And as regards the allegation that they were put under undue pressure, I acknowledge that Mr and Mrs S may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. I note that Mr and Mrs S had attended several sales presentations prior to this one, and had previously declined to make a purchase, so I think it is a fair assumption to make that they understood how the Supplier sold its memberships and that they weren't obliged to buy them. They had also, on a few occasions, cancelled their purchases within the 14-day cancellation period, and they were given a 14-day cooling off period at the Time of Sale and have not provided a credible explanation for why they did not cancel their membership during that time if, as they now attest, they only made the purchase due to being pressurised by the Supplier.

And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs S made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr and Mrs S's credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR now 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 Mr and Mrs S 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

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs S 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 S as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

And 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 S, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

But 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 S as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Would the credit relationship between the Lender and the Consumer have been rendered unfair to them had there been a breach of Regulation 14(3) of the Timeshare Regulations?

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 (if there was one) had on the fairness of the credit relationship between Mr and Mrs S and the Lender under the Credit Agreement and related Purchase Agreement, as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs S and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mr and Mrs S decided to go ahead with their purchase. I'm simply not persuaded by the evidence submitted that that was the case. I'll explain.

As part of its submissions to this Service, the PR sent in a written statement from Mr and Mrs S setting out their recollections of their entire relationship with the Supplier. This statement was signed by both of them and dated 27 September 2024.

As far as it relates to their purchase of the Fractional Club they wrote:

"Finally in 2014 we were on holiday in Spain and were approached by the representatives, again, who invited us to an "update meeting". It was nothing of the sort and was just another time they tricked us into attending a high-pressured sales presentation where the representatives were very persistent in trying to make us agree to another purchase there and then.

The representatives offered us an, on the day deal for the purchase of additional fractional points.

The representatives highlighted that more points offered a greater investment and a greater return on our money when the investment property was sold. The representatives advised that we would make a profit of around half the purchase price when the property was sold in 19 years. This was also an avenue in which to exit our contract with [the Supplier]. They said it was basically buying another "brick" in a bricks and mortar investment. It was likened to buying a house in terms of you put money in now and then it's sold in a set number of years' time, again, were not sure of the exact number, and once it was [sic] sold you'd have the benefit of the house and also money in your pocket.

On the advice of the representatives and believing we were adding to our investment portfolio we purchased 2400 fractional points on the 29th of September 2014 for the cost of £8857.

[...]

We are now aware that fractional points are not an investment and that the promised availability is 'farcical'. We were not given any indication that the management fees would increase at the rate they have and if we had been aware of this at the time of sale, we would not have purchased."

The PR had been engaged by Mr and Mrs S since 2019 as at that point a complaint was submitted to the Lender about an earlier timeshare that Mr and Mrs S had bought from the Supplier using a loan provided by the Lender. But no witness statement was submitted for that complaint, and as part of its initial submissions to this Service for the complaint I am considering here, the PR didn't provide a witness statement from Mr and Mrs S – or anything else that sets out in their own words what happened.

I appreciate that the Letter of Complaint was probably prepared by the PR following a conversation or conversations with Mr and Mrs S – after all, it contains personal information that only Mr and Mrs S would know. However, a letter of complaint (or claim) is not evidence – especially when, as here, it contains bare allegations or a mere summary of the consumer's allegations.

But it was just before the Investigator issued their view, and after 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) ('Shawbrook & BPF v FOS') was handed down, that Mr and Mrs S submitted direct evidence, in their own words, that recalled that the Supplier led them to believe that Fractional Club membership offered them the prospect of a financial gain. And as experience tells me that, the more time that passes between a complaint and the event complained about, the more risk there is of recollections being vague, inaccurate and/or influenced by discussion with others, I find it difficult to understand why the Financial Ombudsman Service was only given such evidence when it was, especially as the PR had been engaged by Mr and Mrs S since 2019.

Indeed, as there isn't any other evidence on file to corroborate Mr and Mrs S's very recent evidence about their motivations at the Time of Sale, there seems to me to be a very real risk that Mr and Mrs S's recollections were coloured by the judgment in Shawbrook & BPF v FOS. And with that being the case, I'm not persuaded that I can give their written recollections the weight necessary to find that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

So, I have looked at Mr and Mrs S's circumstances and their purchasing history to try and understand their motivations when it came to this purchase at the Time of Sale.

Mr and Mrs S made their first timeshare purchase from the Supplier in 2008 when they bought a trial membership. They then made three further purchases prior to the Fractional Club, and on each occasion increased their holiday rights. So, it seems holidays were important to them. And they also increased their holiday rights when they bought the Fractional Club – they went from holding 1,816 fractional points to holding 2,400 – which is an increase of over 30%. This would have afforded them the opportunity to take more and better holidays. And they took 11 weeks of holidays using their Fractional Club membership. Given all of this, and when taking into account the disclaimers that were contained in the

contractual documentation, I think Mr and Mrs S were most likely motivated to purchase the Fractional Club membership for the holidays it could give them

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 I do not feel able to place weight on and rely on what Mr and Mrs S themselves have said, I am not persuaded that their purchase was motivated by their share in the Allocated Property and the possibility of a profit. So I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs S's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr and Mrs S and the Lender was unfair to them 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 and Mrs S were not given sufficient information at the Time of Sale by the Supplier in order to make an informed choice.

It isn't clear what information the PR thinks the Supplier failed to provide at the Time of Sale. But 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.

So, while I acknowledge that it is possible that the Supplier did not give Mr and Mrs S sufficient information, in good time, in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'), even if that was the case, neither Mr and Mrs S nor the PR have persuaded me that they were deprived of information that would have led them to make a different purchasing decision at the Time of Sale. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why they led to a financial loss.

Mr and Mrs S's Commission Complaint

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

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 if I put the issue of commission to one side for the time being, I am not persuaded that the Lender was party to

a credit relationship with Mr and Mrs S under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate them.

But, as I've already said, once the implications of Johnson, Wrench and Hopcraft become clear, I will finalise my findings on this complaint."

The responses to the provisional decision

The Lender responded to the PD and accepted it. The PR, on Mr and Mrs S's behalf, also responded but did not accept it, and provided some further comments and evidence that they wished to be considered.

Following this I also communicated to both sides how I was not persuaded that Mr and Mrs S's credit relationship with the Lender was unfair to them for reasons relating to the commission arrangements between it and the Supplier.

The PR responded to say it had nothing further to add in relation to the commission arrangements, but maintained that the complaint ought to be upheld for the reasons it set out following the PD.

Having received the relevant responses from both sides, I am now finalising my decision.

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 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

The FCA's Principles

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

- Principle 6
- Principle 7
- Principle 8

What I've decided – and why

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

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

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

The PR's further comments in response to the PD, in the main, relate to the issue of whether the credit relationship between Mr and Mrs S and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr and Mrs S as an investment at the Time of Sale; the pressure placed on Mr and Mrs S to make the purchase; and the absence of affordability checks when the Credit Agreement was arranged.

As outlined in my PD, 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 PD. 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 PD. So, I'll focus here on the PR's points raised in response.

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

The PR, on Mr and Mrs S's behalf, says that they were subjected to high-pressure selling and a refusal to allow them time to consider the sales documentation. But as I said in the PD, I acknowledge that Mr and Mrs S may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. Indeed, the only way that they describe the manner in which the product was sold to them was "*...the representatives were very persistent in trying to make us agree to another purchase there and then.*" This does not make me think they were pressured into making a purchase that they didn't actually want. And I can see that they were given a 14-day cooling off period following this sale, which they had used previously for another sale where they had changed their mind.

So, with all of that being the case, I remain unpersuaded that Mr and Mrs S made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

The PR has also repeated the allegation that there was an absence of affordability checks completed before the Credit Agreement was arranged. It has said Mr and Mrs S confirm that there was:

- No income verification

- No household expenditure checks.
- No discussion of suitability.
- No explanation of commission¹.
- Reliance on the salesperson's mischaracterisation of the product as an investment.

But as I said in the PD, I hadn't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances, and I still haven't. But, in any case, as I also explained in the PD, even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I still make no such finding), I would have to be satisfied that the money lent to Mr and Mrs S was firstly actually unaffordable. And no evidence to support that has been submitted. So, from the information provided, I am not persuaded that the lending was unaffordable for Mr and Mrs S.

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

As I explained in my PD, although I found there was a possibility that the Supplier breached Regulation 14(3) at the Time of Sale, I wasn't persuaded by the evidence that Mr and Mrs S purchased the Fractional Club membership in whole or in part down to any such breach. I thought that due to a combination of feeling unable to place the required weight on their written testimony, and their circumstances at the time. And there has been nothing said in response to the PD which makes me think I *should* be able to rely on what was said in Mr and Mrs S's testimony.

So, I remain of the opinion that there is a real risk that Mr and Mrs S's testimony has been coloured by the outcome in *Shawbrook & BPF v FOS* given the timing and the way this evidence was provided. I feel unable to place the required weight on their testimony that would be necessary to find that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

And as I also set out in the PD, Mr and Mrs S, when purchasing the Fractional Club, received an increase of over 30% in holiday rights, affording them the opportunity to take more and better holidays. So, given the evidence I feel able to place weight on, I remain of the opinion that Mr and Mrs S were most likely motivated to purchase the Fractional Club membership for the holidays it could give them.

And on this point, the PR has reiterated that the judgment handed down in *Shawbrook & BPF v FOS* asserted that the relevant question in this circumstance is whether the breach of Regulation 14(3) was a material factor in the decision to purchase, not whether it was the only factor or principal one. It feels that the testimony Mr and Mrs S have provided demonstrates that this was the case. But, as I explained in my provisional decision, I don't feel able to rely on the testimony provided, and I remain of that opinion now. So, it has not been adequately demonstrated that the promise of profit was a motivating factor in their decision to move ahead with the purchase – principal or otherwise.

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 S's Section 75 claims, 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.

¹ The matter of the commission arrangements was addressed by me following this submission, and the PR confirmed it had no further submissions to make on this subject. As such I have not addressed it any further here.

And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate Mr and Mrs S.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 9 January 2026.

Chris Riggs
Ombudsman