DRN-6020877

The complaint

Mr and Mrs M'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/claims] under Section 75 of the CCA.

What happened

Mr and Mrs M were members of a timeshare provider (the 'Supplier') – having purchased several 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 8 October 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,800 fractional points at a cost of £5,768 (the 'Purchase Agreement') after trading in their previous Fractional Club membership.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs M 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 M paid for their Fractional Club membership by taking finance of £5,768 from the Lender (the 'Credit Agreement').

Mr and Mrs M – using a professional representative (the 'PR') – wrote to the Lender on 7 August 2023 (the 'Letter of Complaint') to raise several different concerns. 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 didn't respond to Mr and Mrs M's concerns in a reasonable amount of time, so the complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mr and Mrs M disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. I issued a provisional decision explaining why I was not planning to uphold this complaint.

Th Lender responded to say it agreed with my provisional decision.

The PR responded on behalf of Mr and Mrs M to say it disagreed. It provided some further comments for me to consider when making my final decision, which I consider below.

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 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 (a copy of which is below), for broadly the same reasons.

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.

START OF COPY OF PROVISIONAL FINDINGS

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") if 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.

As a general rule, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 (the 'LA') as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court. So, it is relevant to consider whether Mr and Mrs M's Section 75 claim for misrepresentation was time-barred under the LA before he put it to the Lender.

As I mentioned above, a claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim Mr and Mrs M could make against the Supplier.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued (see Section 2 of the LA).

But a claim, like the one in question here, under Section 75 is also 'an action to recover any sum by virtue of any enactment' under Section 9 of the LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was the Time of Sale. I say this because Mr and Mrs M entered the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which they say were relied upon. And as the loan from the Lender was used to help finance the purchase, it was when they entered into the Credit Agreement that they suffered a loss.

Mr and Mrs M first notified the Lender of his Section 75 claim on 7 August 2023. And as more than six years had passed between the Time of Sale and when that claim was first put to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mr and Mrs M's concerns about the Supplier's alleged misrepresentations.

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.

As noted above when looking at the claim there was an unfair credit relationship, Mr and Mrs M say that they could not holiday where and when they wanted to. On my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, meaning it could be viewed as potentially breaching the Purchase Agreement. It is not clear precisely when this was alleged to have happened, but if it happened within six years of the time the complaint was first made, such a claim would not have been made too late under the LA.

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 and Mrs M states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday. I accept that they 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 and Mrs M 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 and Mrs M 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. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements;

4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;

5. The inherent probabilities of the sale given its circumstances; and

6. Any existing unfairness from a related credit agreement.

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

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

Mr and Mrs M'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 and Mrs M were 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 and Mrs M.

3. the loan interest was excessive.

4. Mr and Mrs M were not given a choice of lender by the Supplier.

5. Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs M were:

    A. told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true.

B. Told by the Supplier that they owned a 'fraction' of the Allocated Property when that was not true as it was owned by a trustee.

C. Told by the Supplier that Fractional Club membership was an "investment" when that was not true.

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

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 and Mrs M 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 M.

Neither the PR nor Mr and Mrs M have set out in any detail what words and/or phrases were 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 alleged misrepresentations in points A or B 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 and Mrs M entered. 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 C, 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 and Mrs M weren't told things about the way the membership worked. It seems to me that these are allegations that Mr and Mrs M weren't given all the information they 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)."

Overall, therefore, I don't think that Mr and Mrs M'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 them as an investment in breach of prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Mr and Mrs M'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 and Mrs M say that the Supplier did exactly that at the Time of Sale.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs M 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*.[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.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs M 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.

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[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).

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

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr and Mrs M 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 issue for the purposes of this decision.

Would the credit relationship between the Lender and Mr and Mrs M 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 had on the fairness of the credit relationship between Mr and Mrs M 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 M 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 M decided to go ahead with their purchase. I say this because:

- Mr and Mrs M did not provide a statement setting out their recollections from the time of sale until this was requested by our Investigator on 18 March 2024. The statement provided is signed and dated 21 March 2024. That is more than eight years after the Time of Sale. While I have no reason to doubt that the statement represents Mr and Mrs M's genuine recollections at the time the statement was written, it does not make clear that they were motivated to enter the Purchase Agreement because they held out the hope or expectation of making a profit as a result (that is, because it was sold or marketed to them as an investment). That doesn't mean Mr and Mrs M 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.

- The statement does not say why Mr and Mrs M entered the Purchase Agreement. It goes into more detail about a previous sale in 2014 (although it is unclear which of the two Fractional Club purchases in 2014 that they are referring to), where they say joining the Supplier would be an investment. But it says nothing about what

happened at the Time of Sale beyond that they took a loan with the Lender to pay for it.

- The statement says that Mr and Mrs M were told by the Lender to consolidate a loan with a previous credit provider (which was used for the first of the two purchases in 2014) but were not told this would be a second mortgage on their home. However, this does not seem plausible, given that:

    - The Credit Agreement was arranged through the Supplier and Mr and Mrs M had no direct contact with the Lender at the Time of Sale.

    - No previous loan was consolidated into the Credit Agreement – which only covered the amount required to pay for the Purchase Agreement.

    - I've seen no evidence that the Lender provided a mortgage or secured loan to Mr and Mrs M at the Time of Sale.

- Following our Investigator's assessment, the PR provided some additional evidence as follows:

    - A webform submitted to a timeshare advice company on 10 February 2018, which said, *"I would like to know my options to deal with a mis sold timeshare investment with [the Supplier]. We are unhappy with how they have treated us and don´t think that we will get the money we were promised when the resort sells our apartments."*

    - A questionnaire completed by the timeshare advice company on 7 January 2022[4], which I understand was completed during a phone call with Mr and Mrs M, which said amongst other things

      "[The Supplier] explained the fractional weeks and the benefits:
        - *told that joining would be an investment*
        - *promised a return greater than the amount will spend at the end of the contract.*
        - *they joined based on the verbal promises that it was a financial investment.*
      - *required to attend further meeting during later holidays*
      - *high pressure meeting, all day long with a rep and pushing to purchase additional points"*

- While the webform shows that that Mr and Mrs M saw Fractional Club membership as an investment and were concerned they would not get the money they were promised, it does not provide any information about why they thought this or what money they expected to receive (such as whether that was potentially a profit). So, it is not enough to persuade me that the Supplier sold and marketed Fractional Club membership to Mr and Mrs M at the Time of Sale and that this was material to their decision to enter the Purchase Agreement.

- The questionnaire says Mr and Mrs M were told that "joining" the Fractional Club was an investment that could lead to a profit. But this seems to be describing Mr and Mrs M's initial purchase of Fractional Club membership in 2014 – not the Time of Sale (when they were not *joining* the Fractional Club but *upgrading* their existing

[4] It is unclear why there was a near four-year gap, or why Mr and Mrs M did not make their claim to the Lender until August 2023

membership of it). I'm mindful that the questionnaire describes the later purchases as purchasing *"additional points"*, which would be used for holidays – not as purchasing an additional investment or with a view to increased profits in future. So, there is not enough information in the questionnaire for me to say that Mr and Mrs M entered the Purchase Agreement because the Supplier sold or marketed Fractional Club membership to them as an investment at the Time of Sale.

Overall, considering the evidence as a whole, Mr and Mrs M themselves don't persuade me that their purchase at the Time of Sale 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 at the Time of Sale was likely to have been material to the decision they ultimately made. Had that been material, I might expect Mr and Mrs M to consistently make this clear over the years when they have been pursuing this matter. But my view of the evidence is that they have not clearly made this point about the Time of Sale at all – let alone consistently.

On balance, therefore, I am not persuaded that Mr and Mrs M'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). So, 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 cannot say that Mr and Mrs M would not have gone ahead with the purchase anyway. And for that reason, I do not think the credit relationship between Mr and Mrs M and the Lender was unfair to them even if the Supplier breached Regulation 14(3).

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

The PR says that Mr and Mrs M were 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 and Mrs M'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 and Mrs M sufficient information, in good time, on the various charges they 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 and Mrs M nor the PR have persuaded me that they 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 facts and circumstances.

As for the PR's argument that Mr and Mrs M'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.

The PR says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson, Wrench and Hopcraft*.

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was *"so high"* and *"a powerful indication that the relationship…was unfair"* (see paragraph 327);

2. The failure to disclose the commission; and

3. The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. The size of the commission as a proportion of the charge for credit;

2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);

3. The characteristics of the consumer;

4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and

5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in *Johnson, Wrench and Hopcraft*, it sets out principles which apply to credit brokers other than car dealer–credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Johnson, Wrench and Hopcraft* is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think *Johnson, Wrench and Hopcraft* assists Mr and Mrs M in arguing that their credit relationship with the Lender was unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

Based on what I've seen, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in

pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr and Mrs M but as the supplier of contractual rights that they obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreement and thus a fiduciary duty.

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

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, no payment between the Lender and the Supplier, such as a commission, was payable when the Credit Agreement was arranged at the Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not currently persuaded that the commercial arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr and Mrs M.

Section 140A: Conclusion

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

Commission: The Alternative Grounds of Complaint

While I've found that Mr and Mrs M credit relationship with the Lender wasn't unfair to them for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Mr and Mrs M complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr and Mrs M (i.e., secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr and Mrs M a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to them. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think they would still have taken out the loan to fund their purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

END OF COPY OF MY PROVISIONAL FINDINGS

The PR's response to my provisional decision

In summary, the PR said the following in response to my provisional decision:

- *"The 2015 upgrade was part of an ongoing investment-framed sales strategy, prohibited by Reg. 14(3) and CPRs, and attributable to the lender under CCA s56, leading to an unfair relationship under s140A."*

- *"Fractional products were systematically marketed by [the Supplier] as investments (as accepted by the High Court), so FOS should not require perfect contemporaneous notes to establish that the same investment pitch carried through to the 2015 upgrade."*

- *"[The provisional decision] under-weighted credible pattern evidence and regulatory context. The investment angle was pervasive in fractional schemes, and the rules require that upgrades not be marketed as investments and that material risk/explanations be given—none of which the Supplier/Lender have adequately demonstrated."*

- *"Lenders remain responsible for what suppliers said and how the sale was conducted."*

- *"Treating the investment breach as immaterial contradicts the letter and spirit of the Timeshare Regulations and CPRs and recent judicial confirmation."*

- *"The 2015 sale was not a standalone purchase but an upgrade that directly followed the 2014 acquisition, which was marketed and represented as an investment opportunity with the prospect of profit. These representations formed the foundation of the customer's understanding and expectations, and they carried forward into the subsequent upgrade. To disregard this context and focus only on the literal wording of the later contract fails to consider the continuity of inducement and reliance created by the original misrepresentation. The upgrade was intrinsically linked to the initial investment promise, and therefore the entire sequence of transactions must be evaluated together to determine fairness and compliance."*

I do not agree with the Supplier that the courts have found that Fractional Club membership was systematically marketed as an investment by the Supplier. The judgement in *Shawbrook Bank Ltd, R (On the Application Of) v Financial Ombudsman Service Ltd [2023] EWHC 1069 (Admin) (05 May 2023)* confirmed that it was open to an ombudsman to uphold a complaint due to a breach of Regulation 14(3) by a timeshare provider where this was material to the customer's decision to enter the purchase. It does not mean that every such complaint should be upheld.

Each complaint must be considered on its own merits. The PR is aware that some similar complaints relating to fractional timeshare are upheld, and some are rejected – depending on the evidence in each case.

In this case I am not persuaded that any breach of Regulation 14(3) by the Supplier was material to the decision Mr and Mrs M made at the Time of Sale. As mentioned in my provisional findings, Mr and Mrs M have not said why they entered the purchase. And what they said about their earlier purchase/s does not lead me to think that they inevitably entered

the Purchase Agreement due to a breach of Regulation 14(3) at the Time of Sale[5]. I refer to my analysis of the evidence in my provisional findings, since I see no reason to depart from or add to what I said there. The evidence in this case is insufficient to persuade me that I should uphold this complaint.

I am aware that the sale of Fractional Club membership to Mr and Mrs M in June 2014 is the subject of a separate complaint which is awaiting an ombudsman's decision. If that complaint is upheld, the deciding ombudsman will consider any unfairness caused by that and how that should be put right. But that is beyond the scope of this decision.

Overall 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 M Section 75 claims. I am not persuaded that the Lender was party to a credit relationship with Mr and Mrs M under the Credit Agreement and related Purchase Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 12 January 2026.

Phillip Lai-Fang
Ombudsman

[5] Under the CCA, a related credit agreement is a credit agreement (with the same debtor and creditor) consolidated by the main agreement – but in this case the Credit Agreement did not consolidate any other, so the previous loans used to purchase Fractional Club membership (and transactions linked to those) are not 'related' to the Credit Agreement.