DRN-6027979

The complaint

Mrs D'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 her under section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA'), (2) deciding against paying a claim under section 75 of the CCA, and (3) breach of fiduciary duty.

Background to the complaint

Mrs D and her husband, Mr D, purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 6 August 2012 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,160 fractional points at a cost of £15,999 (the 'Purchase Agreement').

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

Mrs D paid for their Fractional Club membership by taking finance of £15,999 from the Lender in her sole name (the 'Credit Agreement'). (Consequently, she is the only person eligible to bring this complaint.) The Lender paid the Supplier a commission of £1,639:90. Mrs D settled this loan in May 2015.

Mrs D – using a professional representative (the 'PR') – wrote to the Lender on 6 August 2018 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving her a claim against the Lender under section 75 of the CCA, which the Lender failed to accept and pay.
2. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of section 140A of the CCA.
3. Undeclared commission resulting in a breach of fiduciary duty (as well as causing unfairness under section 140A).

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

Mrs D says that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. told her that Fractional Club membership had a guaranteed end date when that was not true;
2. told her that they were buying an interest in a specific piece of "real property" when that was not true;
3. told her that Fractional Club membership was an "investment" when that was not true because it is not guaranteed to make a profit;
4. told her that the Supplier's holiday resorts were exclusive to its members when that was not true;
5. told her that there would be excellent availability of holidays, which was not true.

Mrs D says that she has a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under section 75 of the CCA, she has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mrs D.

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

The Letter of Complaint set out several reasons why Mrs D says that the credit relationship between her and the Lender was unfair to her under section 140A of the CCA. In summary, they include the following:

1. Fractional Club membership was marketed and sold to her as an investment in breach of regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').
2. The contractual terms setting out the duration of the membership and when the Allocated Property would be sold were unfair contract terms under the Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR'), because there was no guaranteed exit date.
3. Mrs D and her husband were pressured into purchasing Fractional Club membership by the Supplier, and were not given any time to read the terms and conditions before signing the agreements, in breach of the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations').
4. The Lender had paid commission to the Supplier without disclosing this fact to Mrs D.

(3) Breach of fiduciary duty

The failure to disclose that commission had been paid was also said to be a breach of fiduciary duty, independently of section 140A.

The Lender dealt with Mrs D's concerns as a complaint and issued its final response letter on 9 November 2023, rejecting it on the ground that the complaint was time-barred under the Limitation Act, in the mistaken belief that she had not complained until 2023. (The Lender no longer pursues that argument, but continues to dispute her concerns on other grounds.)

Meanwhile, on 20 September 2018, Mrs D had referred the complaint to the Financial Ombudsman Service, represented by the PR.[1] The PR added a further argument as to why the credit relationship was unfair under section 140A – namely, that the decision to lend to Mrs D was irresponsible because the Lender did not carry out the right creditworthiness assessment.

Mrs D's complaint was assessed by an investigator who, having considered the information on file, upheld the complaint on the ground that it had been marketed and sold to her as an investment.

The Lender disagreed with the investigator's assessment and asked for an ombudsman's decision – which is why it was passed to me. I wrote a provisional decision which read as follows.

The legal and regulatory context

The parties are doubtless familiar with the DISP 3.6.4R provisions and the legal and regulatory context relevant to this complaint, which has been shared in several hundred decisions our service has published on very similar complaints. But noting the aspects

[1] The PR subsequently raised this complaint again, more than eight weeks after it had first complained to the Lender, as required by our rules (since the Lender had not yet substantively responded to the complaint).

relating to payment of commission, the following regulatory rules/guidance[2] are also relevant:

- The Consumer Credit Sourcebook ("CONC")[3] content at the material time, notably CONC 3.7.3R, CONC 4.5.3R, and CONC 4.5.2G;
- Principles 6, 7, and 8 of the FCA's Principles for Businesses ("PRIN").[4]

CONC provisions sit alongside firms' wider obligations such as those in PRIN.

(For more detail, please seen the appendix to my provisional decision.)

What I've provisionally 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.

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 already know, a claim against the Lender under section 75 essentially mirrors the claim Mrs D 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 Fractional Club membership had been misrepresented by the Supplier because Mrs D was told that she was 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. Mrs D's share in the 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 her that interest, it did not change the fact that she acquired such an interest.

Mrs D says that she could not holiday where and when she wanted to, and that the Supplier had misled her about the availability of holidays. But I think that 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 signed by Mrs D states that the availability of holidays is subject to demand. It also looks like she made use of her fractional points to holiday on 13 occasions. I accept that she may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had misrepresented the Fractional Club membership.

[2] "R" denotes a rule; "G" denotes guidance.
[3] The relevant rules, guidance and principles can be found in the Financial Conduct Authority ("FCA") *Handbook*, available on its website.
[4] *Ibid*.

It is true that the Fractional Club membership did not have a guaranteed end date, in that it is not possible to guarantee when a property will actually be sold. But it did have a prescribed date on which the Allocated Property would be put up for sale. I don't think that Mrs D would have been misled into thinking that the sale of the property would complete on a specific day, only that the property would be put on the market on that day. And for the same reason, I don't think that the contractual terms about this were unfair under the UTCCR.

I've seen evidence that the Supplier's holiday resorts were not exclusive to its members. But I've not seen evidence (other than Mr and Mrs D's witness statement) that Mr and Mrs D were told that they were exclusive and were not open to the public. The Supplier says that its resorts are not exclusive to members, although club members do receive benefits which are exclusive to members. As Mr and Mrs D wrote their witness statement six years later, it's possible that they have half-remembered being told about exclusive benefits and now recall it differently. I'm open to receiving more evidence on this matter, but for the moment I am not persuaded that the evidence I have now is enough to find that the resorts were misrepresented as only being available to be booked by members.

Mr and Mrs D allege that the Fractional Club membership had been misrepresented by the Supplier as an investment, from which they would make a profit. I am satisfied that Mr and Mrs D's acquisition of a share in the Allocated Property did amount to an investment – as it offered them the prospect of a financial return. Presenting the timeshare as an investment (if it was presented that way) would not, therefore, have amounted to a misrepresentation. And the amount of money they receive on their investment will only be known after the membership term ends, when the Allocated Property is sold. So even if I were to accept that any such comments were made by the Supplier in this regard, I cannot say they would amount to a misrepresentation.

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

For these reasons, therefore, I do not think the Lender is liable to pay Mrs D 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 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 contract entered into by Mrs D was misrepresented by the Supplier in a way that makes for a successful claim under section 75 of the CCA and outcome in this complaint. But Mrs D also says that the credit relationship between her and the Lender was 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 of Sale that she has concerns about. It is those concerns that I explore here.

I have considered the entirety of the credit relationship between Mrs D and the Lender along with all of the circumstances of the complaint and I do not 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 Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale; and
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;
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 Mrs D and the Lender.

(I will deal with undeclared commission as a separate topic, and consider it under both section 140A and as a possible breach of fiduciary duty.)

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

Mrs D's complaint about the Lender being party to an unfair credit relationship 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 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 was prohibited under the CPUT Regulations. I will explain why.

Mrs D says that she was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale, and that she was not given any time to read the Purchase Agreement or the Credit Agreement (or anything else) before signing them. I acknowledge that she may have felt weary after a sales process that went on for a long time. But she was given a 14-day cooling off period in which she could have withdrawn from both agreements, and she has not provided a credible explanation for why she did not cancel her membership during that time. Nor has she said why that cooling-off period was insufficient time for her to read the contractual documents. And with all of that being the case, there is insufficient evidence to demonstrate that Mrs D made the decision to purchase Fractional Club membership because her ability to exercise that choice was significantly impaired by pressure from the Supplier, or because she was not given enough information about it until it was too late to change her decision.

The PR says that the right checks weren't carried out before the Lender lent to Mrs D. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mrs D was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship with the Lender was unfair to her for this reason. Again, from the information provided, I am not satisfied that the lending was unaffordable for Mrs D. If there is any further information on this (or any other points raised in this provisional decision) that Mrs D wishes to provide, I would invite them to do so in response to this provisional decision.

I'm not persuaded, therefore, that Mrs D's credit relationship with the Lender was rendered unfair to her under section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why she says her credit relationship with the Lender was unfair to her. And that's the suggestion that Fractional Club membership was marketed and sold to her as an investment in breach of the prohibition against selling timeshares in that way.

Was Fractional Club membership marketed and sold at the Time 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 Mrs D'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 membership of the Fractional Club 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 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*, 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.

Mrs D's share in the Allocated Property clearly, in my view, constituted an investment as it offered her the prospect of a financial return – whether or not, like all investments, that was more than what she first put into it. But 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 Mrs D 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 her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

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

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mrs D, the financial value of her 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 Fractional Club membership was not sold to Mrs D as an investment. So, it's *possible* that Fractional Club membership wasn't marketed or sold to her 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 Fractional Club membership as

an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mrs D 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 next. 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.

Was the credit relationship between the Lender and Mrs D rendered unfair to her?

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 Mrs D and the Lender that was unfair to her and warranted relief as a result, then an important consideration is whether the Supplier's breach of regulation 14(3) lead her to enter into the Purchase Agreement and the Credit Agreement.

However, in their witness statement, Mr and Mrs D mentioned other reasons why they made their decision to purchase. They wrote:

"[We] *did not want to holiday in France. We wanted to be able to holiday elsewhere."*

"We were advised that we would have luxury accommodation with jacuzzi. We would have excellent availability in worldwide resorts, and we would have a dedicated person who would book our holidays for us. The resorts were all exclusive to members and there was a strict criteria of who could be a member."

"According to the representatives' fractional points were an investment in property that would offer us a profit when it was sold in 19 years. This would also give us a guaranteed exit from the timeshare contract."

The penultimate sentence quoted above is all they say about being told they were buying an investment. The rest of their testimony is that they were motivated by wanting luxury holidays.

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 D'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 still 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 Mrs D and the Lender was unfair to her even if the Supplier did breach regulation 14(3).

Commission

The PR asserted on behalf of Mrs D that the payment of commission, without disclosing this fact to Mrs D, made the financial arrangement unfair. On this issue, I have taken into account the recent judgement of the Supreme Court in *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ("*Hopcraft, Johnson and Wrench*"). My reading of the judgment is that it sets out principles which can

apply to credit brokers other than car dealer–credit brokers. So I've taken into account those principles when considering the allegations of undisclosed payments of commission in this complaint.

the Supreme Court ruled that, in each of the three cases, commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or for 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 & others 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:

- 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";* [5]
- The failure to disclose the commission; and
- 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:

- The size of the commission as a proportion of the charge for credit;
- The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);
- The characteristics of the consumer;
- 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
- Compliance with the regulatory rules.

After careful consideration, I don't think *Hopcraft, Johnson and Wrench* assists Mrs D in arguing that her credit relationship with the Lender was unfair to her for reasons relating to commission, given the facts and circumstances of this complaint.

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

I recognise that it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between her. But as I noted in my provisional decision, case law on section 140A makes clear that regulatory breaches do not automatically lead to an unfair credit relationship, and that such breaches and any consequences must be considered in the round rather than in a narrow or technical way.

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[5] *Hopcraft, Johnson and Wrench* (para 327).

With that being the case, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, I'm not minded to think any such failure is itself a reason to find the credit relationship in question unfair to Mrs D. I say this for the following reasons.

In stark contrast to the facts in Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging Mrs D's Credit Agreement wasn't high. At £1,639:90, it was only 10.25% of the amount borrowed and even less than that (5.61%) as a proportion of the charge for credit, which is the calculation the Supreme Court used.

Had Mrs D known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at this level, I'm not currently persuaded that she either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mrs D wanted Fractional Club membership and had no obvious means of her own to pay for it. And at such a low level, the impact of commission on the cost of the credit she needed for a timeshare she wanted doesn't strike me as disproportionate. So, I think she would still have taken out the loan to fund her purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, 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. As it wasn't acting as an agent of Mrs D but as the supplier of contractual rights she 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 her when arranging the Credit Agreement and thus a fiduciary duty.

I don't consider it necessary for me to take into account any commission the Supplier might have paid to its sales representatives, or that this should be disclosed or factored into any calculation used to determine unfairness. Even if any such arrangement was in place (and I make no finding in this respect), its disclosure and/or payment would be further removed from any obligations the Supplier might have held, and even less likely to have an impact on Mrs D's decision to enter into the Credit Agreement.

Overall, I'm don't intend to conclude that the commission 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 Mrs D.

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

Section 140A: Conclusion

In conclusion, therefore, given all of the facts and circumstances of this complaint, I don't think the credit relationship between the Lender and Mrs D was unfair to her 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.

Commission: alternative grounds of complaint

The PR also argued that a broker accepting commission acts in breach of a fiduciary duty to the borrower, and creates a conflict of interest (relying on *Hurstanger Ltd v Wilson* [2007] 1 WLR 2351). However, the Supreme Court said at paragraph 226: *"The reasoning in Hurstanger in relation to this matter is based on a misunderstanding."* No fiduciary duty arises. So I cannot properly uphold a complaint on this ground.

I'm conscious that another ground to complain about commission might relate to the Lender's compliance with the OFT's regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier. It's *possible* that the Lender may have failed to follow the relevant regulatory guidance (although I make no finding about this). But I don't think any such failure on the Lender's part leads to my awarding compensation to Mrs D because, for the reasons I also set out above, I think Mrs D would still have taken out the loan to fund her purchase at the Time of Sale had the commission arrangements been adequately disclosed at that time.

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 Mrs D's section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement that was unfair to her 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 her.

Responses to my provisional findings

The PR did not accept my provisional decision. They made a number of points about why I should find Mr and Mrs D's witness statement to be credible. They said that the investment element only has to be part of the inducement to buy, not the whole of it. They argued that marketing a timeshare as an investment must make the resulting credit relationship unfair. They said that the way in which Mr and Mrs D's timeshare had been marketed was no different to how it had been marketed in other complaints which had been upheld. They asked for an oral hearing where Mr and Mrs D could give evidence.

My findings

I did not say in my provisional findings that I did not think that Mr and Mrs D were credible witnesses. I accepted their evidence. So I don't think that an oral hearing would assist me or them. And I think I have seen enough written evidence for me to make a fair and reasonable decision in this case.

I agree that the investment element does not have to be the *only* inducement to buy a timeshare, but I do think that it needs to have been important enough for me to be satisfied that the purchase would not have gone ahead without it. That is because it is not enough for there to have been a breach of regulation 14(3). *Plevin, Carney* and *Kerrigan* make it clear that not every regulatory breach automatically makes a credit relationship unfair. So I think the breach has to have caused Mrs D to enter into the Purchase Agreement and the Credit Agreement. And on the balance of probabilities, her and her husband's evidence led and still leads me to think that she would still have done so even if the investment element had never been mentioned. How the timeshare was marketed shows that the regulation was breached, but does not by itself demonstrate the impact of that breach in this particular sale, which has to be evaluated on a case-by-case basis.

So I remain of the view that the resulting credit relationship was not unfair under section140A of the CCA.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 30 January 2026.

Richard Wood
Ombudsman