

## The complaint

Mr and Mrs R'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 R were existing members of a timeshare, having bought a trial membership on 5 June 2013, and then a full membership (the 'Fractional Club 1') having purchased 610 fractional points from a timeshare provider (the 'Supplier') on 3 July 2013.<sup>1</sup>

On 18 June 2014 (the 'Time of Sale') Mr and Mrs R traded in their fractional points and purchased a new membership (the 'Fractional Club 2') from the Supplier. They entered into an agreement with the Supplier to buy 850 fractional points (the 'Purchase Agreement'), and after the trade-in value given to their existing points by the Supplier, they ended up paying £4,695 for membership of Fractional Club 2.

Fractional memberships were asset backed – which meant Fractional Club 2 gave Mr and Mrs R 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.

Mr and Mrs R paid for their Fractional Club 2 membership by taking finance of £17,798 from the Lender in their joint names (the 'Credit Agreement'). This loan consolidated the previous finance from the other lender that Mr and Mrs R used for their first fractional purchase.

Mr and Mrs R – using a professional representative (the 'PR') – wrote to the Lender on 27 November 2018 (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 send a final response to their complaint, so on 14 June 2019 the PR referred it on Mr and Mrs R's behalf to the Financial Ombudsman Service.

After being asked by an Investigator to send this Service its business file, the Lender sent its final response letter to Mr and Mrs R, rejecting their complaint on every ground.

As they were unhappy with the Lender's outcome, Mr and Mrs R's complaint was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

The Investigator thought that the Supplier had marketed and sold Fractional Club 2 membership as an investment to Mr and Mrs R at the Time of Sale in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations

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<sup>1</sup> This purchase was financed by a loan from a different business. A complaint about this purchase and the associated credit agreement has been considered separately by this Service.

2010 (the 'Timeshare Regulations'). And given the impact of that breach on their purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mr and Mrs R was rendered unfair to them for the purposes of Section 140A of the CCA.

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

### **The provisional decision**

I considered the matter and issued a provisional decision (the 'PD') setting out my initial thoughts on the merits of Mr and Mrs R'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.*

*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.*

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

*As I said above, this was Mr and Mrs R's second fractional timeshare purchase, with their first being bought with the help of a loan from a different finance company in 2013. A complaint was made by the same PR to that business. Aside from the details of the sales and finance agreements, the complaints made were virtually identical, so there is considerable duplication in the two provisional decisions. That being the case, I would like to assure Mr and Mrs R that although they are similar, I have considered both complaints on their individual merits, whilst taking into account all of the available evidence.*

### Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

*The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.*

*In short, a claim against the Lender under Section 75 essentially mirrors the claim Mr and Mrs R 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 and the nature of the arrangements between the parties involved in the transaction. The Lender does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mr and Mrs R at the Time of Sale, the Lender is also liable.*

*It was said in the Letter of Complaint that Fractional Club 2 membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs R were:*

- (1) *Told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true.*
- (2) *Told by the Supplier that 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 R 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 R and the PR have concerns about the way in which Fractional Club 2 membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I’ve set out above, I’m not persuaded that there was. And that means that I don’t think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.*

#### *Section 75 of the CCA: the Supplier’s breach of contract*

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*I’ve already summarised how Section 75 of the CCA works and why it gives Mr and Mrs R a right of recourse against the Lender. So, it isn’t necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.*

*Mr and Mrs R say that they could not holiday where and when they wanted to, and at the time they made the complaint in 2018 they had not been able to use their points for the previous three years – which, on my reading of the complaint, suggests that they consider that the Supplier was not living up to its end of the bargain, and had breached the Purchase Agreement.*

*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 signed by Mr and Mrs R states that the availability of holidays was/is subject to demand. It also looks like they were unable to use their points prior to their complaint as they had not paid their annual maintenance fees so were not allowed to under the terms of their Purchase Agreement. 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.*

*Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mr and Mrs R 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?

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*I have already explained why I am not persuaded that the contract entered into by Mr and Mrs R was misrepresented (or breached) by the Supplier in a way that makes for a successful claim under Section 75 of the CCA and outcome in this complaint. But Mr and Mrs R also say that the credit relationship between them 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 they have concerns about. It is those concerns that I explore here.*

*I have considered the entirety of the credit relationship between Mr and Mrs R 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 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 R and the Lender.*

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

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

*However, as things currently stand, neither of these strike 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 R 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 R.*

*Mr and Mrs R say that they were pressured by the Supplier into purchasing Fractional Club 2 membership at the Time of Sale. I acknowledge that they 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 2 membership when they simply did not want to. This was also their third purchase from the Supplier, so they would have been through similar sales presentations before, so I think it is a fair assumption that they would have known how they worked, and it appears there was no compulsion on them to attend this particular presentation anyway. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time, which I find difficult to understand if, as they now attest, they felt compelled to purchase Fractional Club 2 membership when they simply did not want to. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs R made the decision to purchase Fractional Club 2 membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

I'm not persuaded, therefore, that Mr and Mrs R'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 they say their credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club 2 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

Mr and Mrs R's share in the Allocated Property clearly, in my view, constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But the fact that 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 2 membership was marketed or sold to Mr and Mrs R 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 2 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 2 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 2 as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs R, 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 2 membership as an investment. So, I accept that it's equally possible that Fractional Club 2 membership was marketed and sold to Mr and Mrs R as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not

*ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.*

*Was the credit relationship between the Lender and Mr and Mrs R rendered unfair?*

*Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr and Mrs R 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.*

*So, 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 R and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3)<sup>2</sup> 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 2 membership was not an important and motivating factor when Mr and Mrs R decided to go ahead with their purchase. I say this having considered what they have said in a statement submitted to this Service as part of the PR's submissions. In relation to the Time of Sale they say:*

*"In June 2014, we were on holiday in Spain with our fractional points and had to attend a mandatory update meeting. This was actually a long high pressure sales pitch. We were advised that they would get excellent availability of holidays but always had to compromise on dates and places and have not used our points in the last three years. The representative advised us that the resorts were exclusive but you can book the resorts online (often for cheaper). We were advised that the standard of accommodation was high but we had to be moved rooms on our last holiday. The representative advised us that the purchase was an investment in property, that the property will be sold on in 19 years and we will make our money back plus some profit. With regards to the finance agreement, we were offered no other creditors and had never heard of [the Lender]. The representatives went over the terms and conditions quickly. We were given no time alone to think. The forms were filled in for us and we just signed. We did not feel that we fully understood the agreement."*

*I am simply not persuaded that the investment element, and a potential profit from the sale of the Allocated Property was the reason they made the purchase. After all, they were there on holiday after first buying a trial timeshare membership, and then their first full membership which was traded in to make the purchase in question, so it is a fair assumption that they were interested in holidays, and specifically the type of holiday the Supplier was providing. And the emphasis in the statement is all about the holidays, and how they were disappointed by what they had experienced in that regard.*

*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 Mr and Mrs R themselves doesn't persuade me that their purchase was motivated by their*

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<sup>2</sup> which, having taken place during its antecedent negotiations with Mr and Mrs R, is covered by Section 56 of the CCA, falls within the notion of "any other thing done (or not done) by, or on behalf of, the creditor" for the purposes of 140(1)(c) of the CCA and deemed to be something done by the Lender

*share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision 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 R'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 R and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).*

#### *Mr and Mrs R's Commission Complaint*

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*I note that one of Mr and Mrs R'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 in Johnson and Wrench -v- FirstRand Bank, and Hopcraft -v- Close Brothers [2025] UKSC 33 ('Johnson, Wrench and Hopcraft') clarified the law on commission payments – 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. At present, I do not know enough about the relevant arrangements in place at the Time of Sale. So, once I know more, I will finalise my findings on this complaint.*

#### *Conclusion*

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*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 claims, 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 R 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, it is necessary to wait for information on the relevant arrangements (considered in Johnson, Wrench and Hopcraft) between the Lender and Supplier before finalising my thoughts on the merits of this complaint.”*

#### **The responses to the provisional decision**

The Lender responded to the PD and accepted it, and provided details of the commission that it had paid to the Supplier. The PR, on Mr and Mrs R's behalf, also responded but did not accept it, and provided some further comments and evidence that it wished to be considered.

Following this I also communicated to both sides how I was not persuaded that Mr and Mrs R'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 other 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

Included in the PR's response to my PD was an indication that Mr and Mrs R would be willing to attend an oral hearing if one was required to determine the outcome to this complaint, along with the offer to provide sworn affidavits. Oral hearings are something that I can direct happen under DISP 3.5.5. However, the Financial Ombudsman Service is set up to decide complaints informally and it is for me as the decision maker to determine what evidence I think I need to determine what is a fair and reasonable outcome to a complaint. Having considered everything, I do not think I need to hold an oral hearing to fairly determine this complaint.

This is because both parties have already provided lengthy submissions. In this case, I have statements from Mr and Mrs R, other evidence, including the documents from the sale, and full submissions from the PR and the Lender to decide what I think was most likely to have happened. I'm satisfied I'm able to weigh up what Mr and Mrs R have said against the available evidence and arguments to determine what I think happened on the balance of probabilities, without the need for an oral hearing. And as it's in everyone's interest to resolve this complaint as soon as possible, to grant a hearing at such a late stage would inevitably prolong the resolution of this case.

The PR has also offered to have Mr and Mrs R provide a sworn affidavit. But I must remind them that we don't have strict evidential requirements. We aren't expected to decide complaints only after receiving sworn evidence. And our jurisdiction is investigative rather than adversarial. I remain of the view that the information we have on file is enough to cover all the issues I need to enable me to reach a fair decision. And as I've considered everything

on file, including the specific points raised by the PR as part of its request and the additional evidence that has been provided following the PD, I'm of the view that a hearing request and/or sworn affidavits aren't required.

### **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 R 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 R as an investment at the Time of Sale. But it has also reiterated that the decision by the Lender to agree to provide finance for the purchase was irresponsible due to there being no affordability or vulnerability checks carried out, and because of the long-term, high-value credit advanced to Mr and Mrs R who it said were already in their mid-60s at the time of the agreement.

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?**

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#### Was the lending decision irresponsible?

In response to the PD, the PR again said that the decision by the Lender to provide Mr and Mrs R with the finance for their purchase of the Fractional Club membership was irresponsible. It maintained that there were no affordability checks carried out, and given the long-term nature of the loan, it should not have been granted to people of Mr and Mrs R's age.<sup>3</sup>

But as I said in the PD, 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 again, 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 R was actually unaffordable. And neither the PR, nor Mr and Mrs R themselves, have provided any evidence to show that was the case. So, from the information provided, I am not satisfied

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<sup>3</sup> Mr R was 62 and Mrs R was 58 at the time the lending was agreed.

that the lending was and/or is now unaffordable for Mr and Mrs R, so I do not think their credit relationship with the Lender was unfair to them for this reason.

#### The 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, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint, so I didn't think it necessary to make a formal finding on that particular issue for the purposes of the decision. And that was because I didn't think that the credit relationship between Mr and Mrs R and the Lender would have been rendered unfair to them *even if* the Supplier had breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, because I thought Mr and Mrs R would most likely have made the purchase anyway.

As part of its recent submissions, the PR has provided further testimony from Mr and Mrs R. This said, as far as is relevant to this part of the complaint:

*"The product " Fractional Ownership " we were repeatedly told was an asset and could be sold at a profit. There were people waiting to buy. This was an investment which would make us money or we could hand it down to our children who could profit from this.*

*The point that it was, " an investment which would hold its value and increase in value " after having holidays made it sound good.*

*The investment was our main reason for the purchase, the possibility of holidays an advantage but not definite".*

But the statement went on, setting out their recollections of the particular sales agent they were dealing with and the conversation they had with him:

*"The financial arrangements were dealt with by the sales manager [Mr W] we asked questions about interest rates and payment terms and asked to speak to someone from the bank [Mr W] said 'I am that person' was he regulated to do this!!! We asked the question 'why a different bank?' [Mr W] answer was 'we use more than one bank' we questioned the interest rates and wanted to speak to the bank or their representative his automatic reply was 'I am that person'. We questioned the interest rates as they were high compared with the UK at the time, his reply ([Mr W]) 'it's because you are in Spain'. The Bank of England base rate was 0.5% at the time of purchase, it had been since 2009. Shawbrook Bank Limited is a British Bank, [Mr W] answered! 'You are in Spain now'."*

I accept that within the PR's latest submissions Mr and Mrs R have provided further evidence, stating that they bought the Fractional Club 2 membership as an investment as well as for the holidays it could provide. However, I have significant concerns as to the reliability of this evidence. There is a real risk that Mr and Mrs R's testimony has been coloured by what I said in the PD. But in addition to this, Mr R had also made a complaint to this Service about their previous (3 July 2013) purchase of their first fractional membership (Fractional Club 1), funded by a different lender, which was traded in for the Fractional Club 2 membership being considered here. And in relation to that other complaint, they have also submitted a statement. And this other statement is identical, other than the complaint reference number and the name of the lender, to the statement submitted in this case. It is identical even down to the conversation they apparently had with the sales agent, who appears to have been the same person.

I find it very hard to accept that exactly the same thing happened at two sales presentations one year apart, even down to the exact same conversation. It seems that the same statement setting out their recollections of the Time of Sale has been submitted in evidence twice, with only the name of the lender and complaint reference being altered. So, on balance, the timing and way in which this evidence has been provided makes me conclude that I can place little weight on it.

#### Other points

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The PR has also stated that I've been inconsistent in my approach when compared to previous decisions issued by the Service and has provided examples it feels demonstrates this. But my decision is based on consideration of Mr and Mrs R's specific circumstances and their specific complaint. Each complaint turns on its own facts; an Ombudsman's decision on how one timeshare sale occurred does not determine his, or any other Ombudsman's decisions about the facts of other sales at different times.

So, ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr and Mrs R's purchasing decision.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr and Mrs R's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mr and Mrs R and the Lender was unfair to them for this reason.

#### Conclusion

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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 R'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. 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 R.

#### My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 3 February 2026.

Chris Riggs  
**Ombudsman**