

The complaint

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

Background to the complaint

Mr and Mrs W purchased membership of a timeshare (the 'Signature Collection') from a timeshare provider (the 'Supplier') on 24 May 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,540 fractional points at a cost of £25,183 (the 'Purchase Agreement'). But after trading in their existing Fractional Club timeshare, they ended up paying £11,663 for their Signature Collection membership.

Like Fractional Club membership, the Signature Collection membership was also asset backed – which meant it gave Mr and Mrs W 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 W paid for their Signature Collection membership by making an advance payment of £500 and by Mr and Mrs W taking finance of £26,105 from the Lender (the 'Credit Agreement'). This finance included £14,942 to pay off some outstanding finance by the Lender relating to Mr and Mrs W's existing Fractional Club membership.

Mr and Mrs W – using a professional representative (the 'PR') – wrote to the Lender on 11 October 2022 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. A breach of contract by the Supplier giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
3. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
4. The decision to lend being irresponsible because the Lender did not carry out the right creditworthiness assessment.
5. The Credit Agreement being unenforceable because it was not arranged by a credit broker regulated by the Financial Conduct Authority (the 'FCA') to carry out such an activity.

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

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

1. Told them that they had purchased an investment and that their timeshare would considerably appreciate in value, when this was not true.
2. Told them that they would have a share of property, and its value would considerably

increase, therefore they were promised a considerable return on investment, when this was not true.

3. Told them that they could sell the timeshare back to the resort or easily sell it at a profit, when this was not true.
4. Told them that they would have access to the holiday apartment at any time all year round, when this was not true.

Mr and Mrs W say that they have 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, they have a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr and Mrs W.

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

Mr and Mrs W say that the Supplier breached the Purchase Agreement because it went into liquidation which means they are no longer able to recover any amounts due to them. Mr and Mrs W also raised concerns about their ability to use their Signature Collection membership.

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

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

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

1. Signature Collection membership was marketed and sold to them 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 Supplier's right to rescind the agreement if Mr and Mrs W fail to make any payment due within 14 days while forfeiting any previous payments was an unfair contract term under Consumer Rights Act 2015 ('CRA').
3. The decision to lend was irresponsible because the Lender did not carry out the right creditworthiness assessment.
4. They were pressured into purchasing Signature Collection membership by the Supplier.
5. The Credit Agreement being unenforceable because it was not arranged by a credit broker regulated by the FCA to carry out such an activity.

The Lender dealt with Mr and Mrs W's concerns as a complaint and issued its final response letter on 19 October 2022, rejecting it on every ground.

Mr and Mrs W then referred the complaint 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 W disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. At this point a statement setting out Mr and Mrs W's recollections of their entire relationship with the Supplier was submitted by the PR ('witness statement').

I issued a provisional decision ('PD') dated 6 August 2025, concluding the complaint should not be upheld. The findings from my PD are set out 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 includes the following:

The Consumer Credit Act 1974 (as amended by the Consumer Credit Act 2006) (the ‘CCA’)

The timeshare at the centre of the complaint in question was paid for using restricted-use credit that was regulated by the Consumer Credit Act 1974. As a result, the purchase was covered by certain protections afforded to consumers by the CCA provided the necessary conditions were and are met. The most relevant sections as at the relevant time are below.

Section 56: Antecedent Negotiations

Section 75: Liability of Creditor for Breaches by a Supplier

Section 140A: Unfair Relationships Between Creditors and Debtors

Section 140B: Powers of Court in Relation to Unfair Relationships

Section 140C: Interpretation of Sections 140A and 140B

Case Law on Section 140A

Of particular relevance to the complaint in question are:

- 1. The Supreme Court’s judgment in *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61 (‘Plevin’) remains the leading case.*
- 2. The judgment of the Court of Appeal in the case of *Scotland v British Credit Trust* [2014] EWCA Civ 790 (‘Scotland and Reast’) sets out a helpful interpretation of the deemed agency and unfair relationship provisions of the CCA.*
- 3. *Patel v Patel* [2009] EWHC 3264 (QB) (‘Patel’) – in which the High Court held that determining whether or not the relationship complained of was unfair had to be made “having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination”, which was the date of the trial in the case of an existing relationship or otherwise the date the relationship ended.*
- 4. The Supreme Court’s judgment in *Smith v Royal Bank of Scotland Plc* [2023] UKSC 34 (‘Smith’) – which approved the High Court’s judgment in *Patel*.*
- 5. *Deutsche Bank (Suisse) SA v Khan and others* [2013] EWHC 482 (Comm) – in Hamblen J summarised – at paragraph 346 – some of the general principles that apply to the application of the unfair relationship test.*
- 6. *Carney v NM Rothschild & Sons Ltd* [2018] EWHC 958 (‘Carney’).*
- 7. *Kerrigan v Elevate Credit International Ltd* [2020] EWHC 2169 (Comm) (‘Kerrigan’).*
- 8. *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) (‘Shawbrook & BPF v FOS’).*

My Understanding of the Law on the Unfair Relationship Provisions

Under Section 140A of the CCA, a debtor-creditor relationship can be found to have been or be unfair to the debtor because of one or more of the following: the terms of the credit agreement itself; how the creditor exercised or enforced its rights under the agreement; and any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement) (s.140A(1) CCA). Such a finding may also be based on the terms of any related agreement (which here, includes the Purchase Agreement) and, when combined with Section 56 of the CCA, on anything done or not done by the supplier on the creditor's behalf before the making of the credit agreement or any related agreement.

Section 56 plays an important role in the CCA because it defines the terms "antecedent negotiations" and "negotiator". As a result, it provides a foundation for a number of provisions that follow it. But it also creates a statutory agency in particular circumstances. And while Section 56(1) sets out three of them, the most relevant to this complaint are negotiations conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement.

A debtor-creditor-supplier agreement is defined by Section 12(b) of the CCA as "a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier [...]". And Section 11(1)(b) of the CCA says that a restricted-use credit agreement is a regulated credit agreement used to "finance a transaction between the debtor and a person (the 'supplier') other than the creditor [...]" and "restricted-use credit" shall be construed accordingly."

So, the negotiations conducted by the Supplier during the sale of the timeshare(s) in question was/were conducted in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement as defined by Section 12(b). That made them antecedent negotiations under Section 56(1)(c) – which, in turn, meant that they were conducted by the Supplier as an agent for the Lender as per Section 56(2). And such antecedent negotiations were "any other thing done (or not done) by, or on behalf of, the creditor" under s.140A(1)(c) CCA.

Antecedent negotiations under Section 56 cover both the acts and omissions of the Supplier, as Lord Sumption made clear in Plevin, at paragraph 31:

"[Section] 56 provides that [when] antecedent negotiations for a debtor-creditor-supplier agreement are conducted by a credit-broker or the supplier, the negotiations are "deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity". The result is that the debtor's statutory rights of withdrawal from prospective agreements, cancellation and rescission may arise on account of the conduct of the negotiator whether or not he was the creditor's agent.' [...] Sections 56 and 140A(3) provide for a deemed agency, even in a case where there is no actual one. [...] These provisions are there because without them the creditor's responsibility would be engaged only by its own acts or omissions or those of its agents."

And this was recognised by Mrs Justice Collins Rice in Shawbrook & BPF v FOS at paragraph 135:

“By virtue of the deemed agency provision of s.56, therefore, acts or omissions ‘by or on behalf of’ the bank within s.140A(1)(c) may include acts or omissions of the timeshare company in ‘antecedent negotiations’ with the consumer”.

In the case of Scotland & Reast, the Court of Appeal said, at paragraph 56, that the effect of Section 56(2) of the CCA meant that “negotiations are deemed to have been conducted by the negotiator as agent for the creditor, and that is so irrespective of what the position would have been at common law” before going on to say the following in paragraph 74:

“[...] there is nothing in the wording of s.56(2) to suggest any legislative intent to limit its application so as to exclude s.140A. Moreover, the words in s.140A(1)(c) “any other thing done (or not done) by, or on behalf of, the creditor” are entirely apposite to include antecedent negotiations falling within the scope of s.56(1)(c) and which are deemed by s.56(2) to have been conducted by the supplier as agent of the creditor. Indeed the purpose of s.56(2) is to render the creditor responsible for such statements made by the negotiator and so it seems to me wholly consistent with the scheme of the Act that, where appropriate, they should be taken into account in assessing whether the relationship between the creditor and the debtor is unfair.”¹

So, the Supplier is deemed to be Lender’s statutory agent for the purpose of the pre-contractual negotiations.

However, an assessment of unfairness under Section 140A isn’t limited to what happened immediately before or at the time a credit agreement and related agreement were entered into. The High Court held in Patel (which was recently approved by the Supreme Court in the case of Smith), that determining whether or not the relationship complained of was unfair had to be made “having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination” – which was the date of the trial in the case of an existing credit relationship or otherwise the date the credit relationship ended.

The breadth of the unfair relationship test under Section 140A, therefore, is stark. But it isn’t a right afforded to a debtor simply because of a breach of a legal or equitable duty. As the Supreme Court said in Plevin (at paragraph 17):

“Section 140A [...] does not impose any obligation and is not concerned with the question whether the creditor or anyone else is in breach of a duty. It is concerned with [...] whether the creditor’s relationship with the debtor was unfair.”

Instead, it was said by the Supreme Court in Plevin that the protection afforded to debtors by Section 140A is the consequence of all of the relevant facts.

The Law on Misrepresentation

The law relating to misrepresentation is a combination of the common law, equity and statute – though, as I understand it, the Misrepresentation Act 1967 didn’t alter the rules as to what constitutes an effective misrepresentation. It isn’t practical to cover the law on misrepresentation in full in this decision – nor is it necessary. But, summarising the relevant pages in Chitty on Contracts (33rd Edition), a material and actionable misrepresentation is an untrue statement of existing fact or law made by one party (or his agent for the purposes of passing on the representation,

¹ The Court of Appeal’s decision in Scotland was recently followed in Smith.

acting within the scope of his authority) to another party that induced that party to enter into a contract.

The misrepresentation doesn't need to be the only matter that induced the representee to enter into the contract. But the representee must have been materially influenced by the misrepresentation and (unless the misrepresentation was fraudulent or was known to be likely to influence the person to whom it was made) the misrepresentation must be such that it would affect the judgement of a reasonable person when deciding whether to enter into the contract and on what terms.

However, a mere statement of opinion, rather than fact or law, which proves to be unfounded, isn't a misrepresentation unless the opinion amounts to a statement of fact and it can be proved that the person who gave it, did not hold it, or could not reasonably have held it. It also needs to be shown that the other party understood and relied on the implied factual misrepresentation.

Silence, subject to some exceptions, doesn't usually amount to a misrepresentation on its own as there is generally no duty to disclose facts which, if known, would affect a party's decision to enter a contract. And the courts aren't too ready to find an implied representation given the challenges acknowledged throughout case law.

The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations')

The relevant rules and regulations that the Supplier in this complaint had to follow were set out in the Timeshare Regulations. I'm not deciding – nor is it my role to decide – whether the Supplier (which isn't a respondent to this complaint) is liable for any breaches of these Regulations. But they are relevant to this complaint insofar as they inform and influence the extent to which the relationship in question was unfair. After all, they signal the standard of commercial conduct reasonably expected of the Supplier when acting as the creditor's agent in marketing and selling membership of the Owners Club.

The Regulations have been amended in places since the Time of Sale. So, I refer below to the most relevant regulations as they were at the time(s) in question:

- Regulation 12: Key Information
- Regulation 13: Completing the Standard Information Form
- Regulation 14: Marketing and Sales
- Regulation 15: Form of Contract
- Regulation 16: Obligations of Trader

The Timeshare Regulations were introduced to implement EC legislation, Directive 122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange contracts (the '2008 Timeshare Directive'), with the purpose of achieving 'a high level of consumer protection' (Article 1 of the 2008 Timeshare Directive). The EC had deemed the 2008 Timeshare Directive necessary because the nature of timeshare products and the commercial practices that had grown up around their sale made it appropriate to pass specific and detailed legislation, going further than the existing and more general unfair trading practices legislation.²

² See Recital 9 in the Preamble to the 2008 Timeshare Directive.

The Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations')

The CPUT Regulations put in place a regulatory framework to prevent business practices that were and are unfair to consumers. They have been amended in places since they were first introduced. And it's only since 1 October 2014 that they imposed civil liability for certain breaches – though not misleading omissions. But, again, I'm not deciding – nor is it my role to decide – whether the Supplier is liable for any breaches of these regulations. Instead, they are relevant to this complaint insofar as they inform and influence the extent to which the relationship in question was unfair as they also signal the standard of commercial conduct reasonably expected of the Supplier when acting as the creditor's agent in marketing and selling membership of the Owners Club.

Below are the most relevant regulations as they were at the relevant time(s):

- Regulation 3: Prohibition of Unfair Commercial Practices
- Regulation 5: Misleading Actions
- Regulation 6: Misleading Omissions
- Regulation 7: Aggressive Commercial Practices
- Schedule 1: Paragraphs 7 and 24

The Consumer Rights Act 2015 (the 'CRA')

The CRA, amongst other things, protects consumers against unfair terms in contracts. It applies to contracts entered into on or after 1 October 2015 – replacing the Unfair Terms in Consumer Contracts Regulations 1999.

Part 2 of the CRA is the most relevant section as at the relevant time(s).

Relevant Publications

The Timeshare Regulations provided a regulatory framework. But as the parties to this complaint already know, I am also required to take into account, when appropriate, what I consider to have been good industry practice at the relevant time – which, in this complaint, includes the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code').

My provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

And having done that, I do not currently think this complaint should be upheld. And I'll explain why.

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

As both sides may already know, a claim against the Lender under Section 75 essentially mirrors the claim Mr and Mrs W 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 Signature Collection membership had been misrepresented because the Supplier told Mr and Mrs W that they had purchased an investment that would considerably appreciate in value. In addition to being told they would have a share of a property with its value increasing leading to a considerable return their investment.

As I explained earlier, Mr and Mrs W's membership included a share in the net sale proceeds of a property so telling prospective members that they were buying a fraction or share of one of the Supplier's properties was not untrue. Mr and Mrs W'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 them that interest, it did not change the fact that they acquired such an interest.

Also, as Mr and Mrs W's membership provided them with a share in the Allocated Property with the prospect of a financial return, I do consider that to be an investment. Therefore, if the Supplier told Mr and Mrs W that the membership was an investment then this would not have been untrue. However, marketing or selling the product as an investment was prohibited but I'll explore this in more detail below.

I'm not persuaded that the Supplier would have told Mr and Mrs W that their investment would considerably appreciate in value. It was impossible to predict the value of what Mr and Mrs W's asset would be worth when it was eventually sold and I don't think it's probable that the Supplier attempted to do so. The amount of money Mr and Mrs W are due to receive would only be known after their Allocated Property is sold – which only occurs once the membership term ends.

Mr and Mrs W have also alleged that the Supplier told them they could sell their membership back to the resort or easily sell it at a profit. As I understand it, the Supplier does not operate a resale, rental or re-purchase programme. The Lender says this was made clear on the Members Declaration that Mr and Mrs W would have seen at the Time of Sale. Although I've not received a copy of Mr and Mrs W's signed Members Declaration, I'm satisfied this would have been provided to Mr and Mrs W.³

So, I think it's less probable that the sales representatives told Mr and Mrs W something that was easily verifiable as being untrue. Mr and Mrs W can sell their membership if they wish so if the Supplier explained this to them, this would not amount to a misrepresentation. However, I find it unlikely that the Supplier would have told Mr and Mrs W that they would receive a profit as a result of selling their membership themselves. I say this as what someone is willing to pay for such a membership may vary significantly and this would not be known to the Supplier at the Time of Sale.

Lastly, in the Letter of Complaint Mr and Mrs W say they were told they would have access to the holiday apartment at any time of the year. Mr and Mrs W did have access to a specific apartment in a specific week of the year and Mr and Mrs W mentioned this within their witness statement so it appears they were aware of this distinguishing feature of their Signature Collection membership. This was made

³ If Mr and Mrs W disagree with what I've said, please let me know in response to my provisional decision.

clear on the paperwork they signed at the Time of Sale so I can't agree a false statement of fact by the Supplier was made.

While I recognise that Mr and Mrs W have concerns about the way in which their Signature Collection membership was sold, they have not persuaded me that there were any false statements of existing fact made by the Supplier at the Time of Sale.

For these reasons, therefore, I do not think the Lender is liable to pay Mr and Mrs W 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 75 of the CCA: the Supplier's breach of contract

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

Mr and Mrs W shared concerns about their ability to use their Signature Collection membership - 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.

As I've mentioned earlier, Mr and Mrs W have the right to stay in the Allocated Property, but they also had the ability to convert their membership into points and travel to any destination of their choice at any time of the year. Like any holiday accommodation, availability was not unlimited. From what I know about the Supplier's sale process, the paperwork given to Mr and Mrs W would have made it clear that the availability of holidays was/is subject to demand. So, 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.

Mr and Mrs W also say that the Supplier breached the Purchase Agreement because it went into liquidation in December 2020, meaning that they can no longer recover any amounts expected to be awarded by Spanish courts. I'm not aware of Mr and Mrs W having made a claim in the Spanish Courts but I don't see how this is relevant to their complaint against the Lender. I say this as their claim under Section 75 is totally separate to any action they choose to take in a Spanish Court.

I can however see that certain parts of the Supplier's business were put into administration towards the end of 2020. Neither Mr and Mrs W nor the PR have said, suggested or provided evidence to demonstrate, as a result of any administration action, that they are no longer:

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

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mr and Mrs W any compensation for a breach of contract by the

Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

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

I have already explained why I am not persuaded that the contract entered into by Mr and Mrs W 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 W also says 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 W 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 Mr and Mrs W and the Lender.

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

Mr and Mrs W'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.

The PR, on behalf of Mr and Mrs W, also say the Credit Agreement was arranged by an unauthorised person, They say this because they can see the Supplier was authorised to carry out such activities but believe as sales representatives were self-employed, they didn't have the correct authorisation in place to arrange credit. I'm not persuaded this is the case as the Supplier was authorised by the FCA to broker credit and it's the Supplier that is named as the credit intermediary on the Credit Agreement, not an individual. Furthermore, the Lender has confirmed that the relevant sales representative who arranged Mr and Mrs W's credit was employed by the Supplier and trained to broker credit agreements. Considering this, I'm not persuaded that the Credit Agreement was arranged by an unauthorised credit broker.

The PR says that the right checks weren't carried out before the Lender lent to Mr and Mrs W. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. I acknowledge Mr and Mrs W say that they were declined for finance from other finance providers 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 W 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. From November 2020, Mr and Mrs W struggled to make repayments on their loan but Mr and Mrs W have suggested this was due to a change in circumstances when Mrs W unfortunately found herself out of work. From the information provided, I am not satisfied that the lending was unaffordable for Mr and Mrs W at the Time of Sale. The Lender has since confirmed it has written off Mr and Mrs W loan balance. If there is any further information on this (or any other points raised in this provisional decision) that Mr and Mrs W wish to provide, I would invite them to do so in response to this provisional decision.

Mr and Mrs W say that they pressured by the Supplier into purchasing Signature Collection 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 and they described being exhausted but I'm not persuaded that they had no choice but to purchase Signature Collection membership when they simply did not want to. Mr and Mrs W 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. With being the case, there is insufficient evidence to demonstrate that Mr and Mrs W made the decision to purchase Signature Collection 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 W'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 Signature Collection membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

Was Signature Collection 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 Mr and Mrs W's Signature Collection 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 Signature Collection 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.

Mr and Mrs W'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 Signature Collection membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

In other words, the Timeshare Regulations did not ban products such as the Signature Collection. They just regulated how such products were marketed and sold.

To conclude, therefore, that Signature Collection membership was marketed or sold to Mr and Mrs W 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 Signature Collection membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

There is competing evidence in this complaint as to whether Signature Collection 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 Signature Collection as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs W 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. From my understanding, there were disclaimers in the contemporaneous paperwork that state that Signature Collection membership was not sold as an investment. So, it's possible that Signature Collection membership wasn't marketed or sold to them as an investment in breach of Regulation 14(3).

On the other hand, I acknowledge that the Supplier's training material left open the possibility that the sales representative may have positioned Signature Collection membership as an investment. So, I accept that it's equally possible that Signature Collection was marketed and sold to Mr and Mrs W as an investment in breach of Regulation 14(3).

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

Was the credit relationship between the Lender and Mr and Mrs W rendered unfair to them?

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

And in light of what the courts had to say in Carney and Kerrigan, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs W 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.

On my reading of the evidence provided and Mr and Mrs W's recollections of the sales process at the Time of Sale, I'm not satisfied that any potential breach of Regulation 14(3) had a material impact on their purchasing decision. Mr and Mrs W say they were told by the Supplier that:

"...would guarantee us a much larger payout at the end of the 19 years because they were sought after apartments that were selling for hundreds of thousands of pounds, so wouldn't lose value"

Mr and Mrs W haven't provided any further detail including what sort of return the Supplier told them they might be able to expect from their Signature Collection membership. However, they did say, when talking about the earlier purchase, that they were told they would receive 50% or more of the money back. Taken as a whole, their statement doesn't suggest to me that Mr and Mrs W took from the Supplier that the Signature Collection membership was an investment from which they would make a financial gain i.e. a profit.

Mr and Mrs W's witness statement does not convince me that Mr and Mrs W's decision to enter into the Purchase Agreement was materially affected by the Supplier's marketing of selling of the Signature Collection membership as an investment (if it did so) as they explain:

"...wanted to take this meeting, because what [the Supplier] had sold us wasn't working for us, we were never able to get what we wanted, when we wanted it...

...they kept piling the pressure on

...we were absolutely exhausted and would have signed away our first borne to leave that room"

It seems to me that the reason Mr and Mrs W went ahead with this purchase, based on their own recollections, was because (1) they were exhausted and felt under pressure and (2) their previous membership wasn't working for them in terms of their holiday rights so this membership would suit their holiday needs better. Mr and Mrs W say that the only way to make bookings was through the "bonus week scheme" or the "last minute vacancy list". They haven't provided me with any further information about this but the Lender has confirmed Mr and Mrs W used their membership on three occasions prior to their membership being cancelled in 2021 due to non-payment of their management charge. So, it seems to me that Mr and Mrs W were able to make use of the benefits provided under their membership until it was suspended.

On balance, therefore, even if the Supplier had marketed or sold the Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs W's decision to purchase Signature Collection 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 W and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

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

PR says that there is an unfair term in the contractual documents (Clause D of the Purchase Agreement). On my reading, the effect of this clause would ultimately mean Mr and Mrs W's Signature Collection membership can be rescinded by the Supplier in the event that Mr and Mrs W fail to make any payments due with 14 days, forfeiting their membership and any payments made towards their purchase. Therefore, although not cited by PR, the consequence of non-payment was an unfair contract term under the CRA.

*To conclude that a term in the Purchase Agreement rendered the credit relationship between Mr and Mrs W and the Lender unfair to them, I'd have to see that the term was unfair under the CRA and operated against Mr and Mrs W in practice. In other words, it's important to consider what real-world consequences, in terms of harm or prejudice to Mr and Mrs W, has flowed from the term, because those consequences are relevant to assessment of unfairness under Section 140A. For example, the judge attached importance to the question of how an unfair term had been operated in practice: see *Link Financial v Wilson* [2014] EWHC 252 (Ch) at [46].*

As a result, I don't think the mere presence of a contractual term that was/is potentially unfair is likely to lead to an unfair credit relationship unless it had been applied in practice.

Neither PR or Mr and Mrs W have described how the operation of this term has led to an unfairness to Mr and Mrs W in particular. I understand Mr and Mrs W's Signature Collection membership is currently suspended due to non-payment of their management fees but the Lender has confirmed their membership can be reinstated if they wish. Considering this, I cannot see the term cited by PR is being operated against Mr and Mrs W, let alone unfairly.

In summary, given all of the facts and circumstances of this complaint, I don't think the credit relationship between The Lender and Mr and Mrs W was unfair to them for the purposes of Section 140A.

I gave both parties the opportunity of responding and providing any further information or argument before I made my final decision. The Lender responded and said it agreed with my PD and had nothing further to add. The PR also responded on behalf of Mr and Mrs W and did not accept the PD, providing some further comments and arguments they wish to be considered.

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 set out in my PD 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 have 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 have considered the case afresh and having done so, I have reached the same decision as that which I outlined in my PD, for broadly the same reasons.

Again, my role as an Ombudsman is not 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 have not commented on, or referred to, something that either party has said, this does not mean I have not considered it. Rather, I have 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 only relate to the issue of whether the credit relationship between Mr and Mrs W 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 W as an investment at the Time of Sale.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But they did not make any further comments in relation to those in their response to my PD. Indeed, they have not said they disagree with any of my provisional conclusions in relation to those other points. And since I have not 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 will focus here on the PR's points raised in response.

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

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

1. The 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 in relation to Signature Collection membership, 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, when relevant
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 W and the Lender given their circumstances at the Time of Sale.

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

The PR explained in their response to my PD that they had not shared the Investigator's view on this complaint with Mr and Mrs W, saying "*this was done in order not to influence their recollections*". The PR said this means Mr and Mrs W's recollections have not been influenced by either the Investigator's view or the outcome in *Shawbrook & BPF v FOS*⁴. But I had not said that Mr and Mrs W's testimony was coloured by the Investigator's view and/or the outcome in *Shawbrook & BPF v FOS*.

I accepted in my PD that the membership may well have been marketed as an investment to Mr and Mrs W in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. I also explained that while the Supplier's sales processes left open the possibility that the sales representative may have positioned Signature Collection membership as an investment, it was not necessary for me to make a finding on this as it is not determinative of the outcome of the complaint. I explained that regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

The PR's response to my PD has not changed my view of this, and so whether the Supplier's breach of Regulation 14(3) led Mr and Mrs W to enter into the Purchase Agreement and the Credit Agreement remains an important consideration.

Although Mr and Mrs W's recollections offer a suggestion that the prospect of a financial gain was an important and motivating factor in their decision to purchase Signature Collection membership, having read their testimony as a whole, I did not find them sufficiently persuasive and reliable for me to reach that conclusion. So, I was not persuaded that the evidence suggested Mr and Mrs W purchased their Signature Collection membership in whole or in part down to any breach of Regulation 14(3).

The PR believes the investment element did play an important part during the sales process in convincing Mr and Mrs W to purchase and was a motivating factor in their decision making. It says that as the Supplier's pricing sheet set out the "Unit share" Mr and Mrs W acquired under their Signature Collection membership, this shows the investment element played "quite an important role" in convincing them to purchase it. I do not agree with that analysis. The pricing sheet was a proforma document that captured a number of details about the purchase in a standardised format. The fact the unit share acquired was recorded indicates the purchase included an investment element. But it follows that the Supplier would

⁴ R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS')

have recorded that information irrespective of the customer's motivations for making the purchase. So I do not consider this document offers an insight into Mr and Mrs W's motivation for making their purchase.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my provisional decision, the Timeshare Regulations did not ban products such as the Signature Collection membership. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances.

As I explained in my PD, I set out the reasons why I felt Mr and Mrs W may have gone ahead with this purchase irrespective of what they may have been told about any potential returns that they could have expected. And nothing in what the PR has said in response to my PD convinces me that any breach of Regulation 14(3) was material to Mr and Mrs W'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 am not persuaded Mr and Mrs W's decision to make the purchase was motivated by the prospect of a financial gain. So, I still do not think the credit relationship between Mr and Mrs W and the Lender was unfair to them for this reason.

S140A conclusion

Given all of the factors I have looked at in this part of my decision, and having taken all of them into account, I am not persuaded that the credit relationship between Mr and Mrs W and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. So, I do not think it is fair or reasonable that I uphold this complaint on that basis.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs W'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 them.

My final decision

I do not uphold this complaint for the reasons I have set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs W to accept or reject my decision before 6 February 2026.

Sameena Ali
Ombudsman