

## The complaint

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

## What happened

Mrs C and Mr S were members of a timeshare provider (the 'Supplier') – having purchased a product from it previously. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 1 October 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1550 fractional points at a cost of £17,488 (the 'Purchase Agreement').

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

Mrs C and Mr S paid for their Fractional Club membership by trading in an earlier membership and taking finance of £21,763 from the Lender (the 'Credit Agreement'). The Credit Agreement was also used to refinance an earlier loan taken to pay for that earlier membership.

Mrs C and Mr S – using a professional representative (the 'PR') – wrote to the Lender on 4 April 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above. The Lender dealt with Mrs C and Mr S's concerns as a complaint and issued its final response letter on 19 February 2024, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mrs C and Mr S disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I considered the matter and issued a provisional decision (the 'PD'). In that decision, I said:

*"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 think this complaint should be upheld.*

*However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.*

## **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.*

*Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.*

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

- 1. Told that they had purchased an investment that would "considerably appreciate in value" when that was not true.*
- 2. Told that they would own a share in a property that would increase in value during the membership term when that was not true.*
- 3. Made to believe that they would have access to "the holiday apartment" at any time all year round when that was not true.*
- 4. Told that they could sell the time share back to the resort or easily sell it at a profit.*

*However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn't enough evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.*

*As for points 3 and 4, while it's possible that Fractional Club membership was misrepresented at the Time of Sale for that reason, I don't think it's probable. It's given little to none of the colour or context necessary to demonstrating that the Supplier made a false statement of existing fact and/or opinion. And as there isn't any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for these reasons, I don't think it was.*

*So, while I recognise that Mrs C and Mr C and the PR have concerns about the way in which Fractional Club 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 140A of the CCA: did the Lender participate in an unfair credit relationship?**

*I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.*

*Having considered the entirety of the credit relationship between Mrs C and Mr S and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:*

- 1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;*
- 2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
- 3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;*
- 4. The inherent probabilities of the sale given its circumstances; and, when relevant*
- 5. Any existing unfairness from a related credit agreement.*

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

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

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

*The PR says, for instance, that the right checks weren't carried out before the Lender lent to them. 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 C and Mr S was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for them.*

*It is worth stating here that I have given due consideration to the comments and evidence provided by the PR in respect of this aspect of the complaint. However, like our Investigator, I also think that the evidence provided doesn't persuade me that there was an affordability issue that the Lender overlooked. I say that because from the copy bank statements provided from the Time of Sale, Mrs C's bank account is comfortably in credit.*

*Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mrs C and Mr S knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for them, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to a financial loss for Mrs C and Mr S – such that I can say that the credit relationship in question was unfair on them as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate them, even if the loan wasn't arranged properly.*

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

marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Mrs C and Mr S's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club membership as an investment. This is what the provision said at the Time of Sale:

*"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."*

But the PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mrs C and Mr S were told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

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

A share in the Allocated Property clearly constituted an investment as it offered Mrs C and Mr S the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

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

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

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

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an

investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mrs C and Mr S as an investment in breach of Regulation 14(3).

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

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

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

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when they decided to go ahead with their purchase. 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 Mrs C and Mr S themselves don't persuade me that their purchase was motivated by their 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.

What I am considering here, though, is whether any such positioning of the Fractional Club membership as an investment was material to Mrs C and Mr S' decision to purchase it (and in turn, therefore, to enter into the Credit Agreement). Mrs C and Mr S' comments do not lead me to think that it was.

I've considered the chronology of the complaint including when Mrs C and Mr S/their PR complained to the Lender, the date Mrs C and Mr S gave authority to PR represent them, and when Mrs C and Mr S were likely to have given their 'witness statement', which is undated. The Lender said it didn't receive a statement from Mrs C and Mr S with their dispute. Mrs C and Mr S's signed authority to the PR is dated April 2024, and I think it likely that they also provided their 'witness statement' around the same time. This was some five and a half years after the Time of Sale and two years after the dispute was raised with the Lender. The timing of this is critical as I would've expected to see such evidence – if it was available – to be lodged along with the dispute at the outset; but this didn't happen, and it's not clear why. The witness statement is the only account I have from Mrs C and Mr S.

I'm conscious that it was only after the Lender issued its Final Response in February 2024, and after the judgment in *Shawbrook & BPF v FOS* was handed down in June 2023, that Mrs C and Mr S stated that the Supplier told them or led them to believe that the Fractional Club membership offered them the prospect of a financial gain – in other words this is when they first said that the membership "... was a willable asset and after the 19 years the fraction would be sold and profits ours". And I'm cognisant that the more time that passes

*between a complaint and the event complained about, the more risk there is of recollections being vague, inaccurate and influenced by discussions with others.*

*In this case, especially in the absence of an earlier account, I simply can't rule out the latter. I find it difficult to explain why Mrs C and Mr S didn't, at the outset, just say that they'd been told they would make more money than they put in and this is why they purchased Fractional Club membership if this is what had happened. In the circumstances, and on balance, I think there's a high risk that Mrs C and Mr S were influenced by discussions they had with others. Put simply, I can't put enough weight on Mrs C and Mr S' account that would enable me to uphold this complaint.*

*I have also borne in mind that Mrs C and Mr S were upgrading from their existing trial membership, which only offered a limited number of holidays over a three-year period, to full membership. This serves to underline Mrs C and Mr S' interest in the holiday benefits the membership offered, which leads me to think they would have gone ahead with the purchase even if it had not been presented to them as an investment opportunity.*

*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 Mrs C and Mr S's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mrs C and Mr S and the Lender was unfair to them even if the Supplier had breached Regulation 14(3)."*

In conclusion, given the facts and circumstances of this complaint, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mrs C and Mr S's Section 75 claim, and I was 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 could see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

The Lender responded to the PD and accepted it.

The PR also responded. It did not accept the PD and provided some further comments it wanted me to take into account. Its comments included, for the first time, its concerns about an alleged payment of an undisclosed commission by the Lender to the Supplier for acting as credit broker and arranging the Credit Agreement. I've since written to the parties setting out my thoughts on why I wasn't persuaded to uphold this aspect of the complaint. I said:

***"My findings on Mrs C and Mr S's commission complaint***

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

*As both sides already know, the Supreme Court handed down an important judgment on*

*1 August 2025 in a series of cases concerned with the issue of commission: Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 ('Hopcraft, Johnson and Wrench').*

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

*assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A “disinterested duty”, as described in Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly [2021] EWCA Civ 471, is not enough.*

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

- 1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson’s case it was 55%. This was “so high” and “a powerful indication that the relationship...was unfair” (see paragraph 327);*
- 2. The failure to disclose the commission; and*
- 3. The concealment of the commercial tie between the car dealer and the lender.*

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

- 1. The size of the commission as a proportion of the charge for credit;*
- 2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);*
- 3. The characteristics of the consumer;*
- 4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and*
- 5. Compliance with the regulatory rules.*

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

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

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

*I acknowledge 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 them.*

*But as I’ve said above, the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. And with that being the case, it isn’t necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I don’t currently think any such failure is itself a reason to find the credit relationship in question unfair to Mrs C and Mr S.*

*In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mrs C and Mr S entered into wasn't high. At £1,088.15, it was only 5% of the amount borrowed and even less than that (4.63%) as a proportion of the charge for credit. So, had Mrs C and Mrs S known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mrs C and Mr S wanted Fractional Club membership and had no obvious means of their own to pay for it. And at such a low level, the impact of commission on the cost of the credit they needed for a timeshare they wanted doesn't strike me as disproportionate. So, I think they would still have taken out the loan to fund their 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. And as it wasn't acting as an agent of Mrs C and Mr S but as the supplier of contractual rights they obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreement and thus a fiduciary duty.*

*Overall, therefore, I'm not currently persuaded 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 C and Mr S.*

### **Section 140A: Conclusion**

*Given all of the factors I've looked at in this part of my decision and in my provisional decision dated 24 October 2025, and having taken all of them into account, I'm not persuaded that the credit relationship between Mrs C and Mr S and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.*

### **Commission: The Alternative Grounds of Complaint**

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

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

*However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mrs C and Mr S a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to them. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I*

*think Mrs C and Mr S would still have taken out the loan to fund their purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.”*

No further comment from either party was forthcoming.

So, having received the relevant responses from both parties – and having provided my findings in respect of the PR’s concerns about undisclosed commission – I’m now finalising my decision.

### **The legal and regulatory context**

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators’ rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service’s website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

The Consumer Credit Sourcebook (‘CONC’) – Found in the Financial Conduct Authority’s (the ‘FCA’) Handbook of Rules and Guidance

Below are the most relevant provisions and/or guidance as they were at the relevant time:

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

### The FCA’s Principles

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

- Principle 6
- Principle 7
- Principle 8

### **What I’ve decided – and why**

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

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

Again, my role as an Ombudsman isn’t to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven’t commented on, or referred to, something that either party has said, this doesn’t mean I haven’t considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the PD in the main relate to the issue of whether the credit relationship between Mrs C and Mr S and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to them as an investment at the Time of Sale. It has also now argued for the first time that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship and it has reiterated that Mrs C and Mr S were subjected to an irresponsible lending decision by the Lender.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But it didn't make any further comments in relation to those in their response to my PD. Indeed, it hasn't said it disagrees with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on the PR's points raised in response.

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

The PR has highlighted under Section 140B (9) of the CCA, the burden of proof falls on the Lender to disprove the allegation that its relationship with Mrs C and Mr S was unfair. I agree that this is correct, placing a burden on lenders during the process of litigation. That does not mean, though, that the Lender – or I – should take a claim at face value. There remains an onus on Mrs C and Mr S to provide some evidence for the claim they making, despite the overall burden of proof resting with the Lender, as was set out in the judgment in *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34 at paragraph 40. I also remind both parties that it is my role to make findings on what I consider to be fair and reasonable in all the circumstances of any given complaint.

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

In its response to my PD, the PR has reasserted its view that the Supplier marketed the Fractional Club membership to Mrs C and Mr S as an investment and that this was a motivating factor in their decision.

I accepted in my PD that the membership may well have been marketed as an investment to Mrs C and Mr S 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 Fractional Club membership as an investment, it wasn't 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 hasn't changed my view of this, and so whether the Supplier's breach of Regulation 14(3) led Mrs C and Mr S to enter into the Purchase Agreement and the Credit Agreement remains an important consideration.

In my PD I explained the reasons why I didn't think any breach of Regulation 14(3) had led Mrs C and Mr S to proceed with their purchase. In short, I was not persuaded that their decision was motivated by the prospect of a financial gain (i.e., a profit). In reaching that view, I took into account the testimony given by Mrs C and Mr S in the course of their complaint. I recognise the PR has interpreted Mrs C and Mr S's testimony differently to how I

have, and I have carefully considered its further comments. Ultimately though, they have not led me to a different conclusion.

The PR objects to the approach I've taken in assessing this aspect of the complaint, believing that I have detracted from the judgment in *Shawbrook & BPF v FOS*<sup>1</sup> and the case law that contributed to it, by requiring Mrs C and Mr S to have been "primarily or mainly motivated" by the investment element in order to uphold the complaint. But I did not make such a finding. I said that, in my view, Mrs C and Mr S were highly motivated by the holiday options offered by the Supplier – which was a factor in my overall conclusion in light of all the available evidence that they would, on balance, have pressed ahead with their purchase of the Fractional Club membership even if there had been a breach of Regulation 14(3).

So, for the reasons given in my PD and above, I still do not think that any breach of Regulation 14(3), if there was one, was material to Mrs C and Mr S's decision to purchase the Fractional Club membership.

I've thought too about the comments made by the PR in response to my PD about irresponsible lending. My understanding is that for me to interfere in the commercial decision to lend I would have to be satisfied that the decision to lend was one no reasonable lender would have made. I've carefully considered the evidence again in relation to this particular concern of the PR's as well as taking its comments in response to my PD about this matter into account. Having done so, I have not been persuaded to depart from the findings I set out provisionally about this issue. Put simply, I am not satisfied that the lending was actually unaffordable for Mrs C and Mr S such that I could reasonably conclude that they had lost out as a result and that I should go on to consider whether the credit relationship with the Lender was unfair to them as a consequence.

I say this because, whilst I can see from the income and expenditure information provided by the PR in support of its position on this matter that it has stated Mrs C and Mr S's gross monthly income was £3,982.16, I can't ignore that the bank statements provided don't appear to correspond with that figure. The bank statements show that Mr S had an average monthly gross income of £3,000 (whereas the income and expenditure information stated it was £2,086.25) and that Mrs C had an average monthly gross income of c£2,300 (whereas the income and expenditure information stated it was £1,895.91). I can see too from the Lender's application form at the Time of Sale, that both Mrs C and Mr S declared their annual gross income to be £30,000 each (equivalent to £5,000 per month).

I note that our Investigator commented on the difference between the income and expenditure form and the bank statements provided, when commenting on the PR's response to his view. He said that the income and expenditure form didn't appear to accurately reflect Mrs C and Mr S's actual financial circumstances from around the Time of Sale. He also noted that the balance of Mrs C's current account each month was never lower than c£4,200. Thus, our Investigator was not persuaded that the lending was unaffordable for Mrs C and Mr S.

Having reviewed all of this information, I cannot reasonably disagree. And although I have thought about the comments about this matter provided by the PR in response to my provisional decision, I can't overlook the fact that it has, at no point, addressed the discrepancy highlighted by our Investigator between the income and expenditure form and the bank statements provided.

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<sup>1</sup> 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').

I can see that, in response to my PD, the PR has continued to make its arguments based on the information contained in the income and expenditure form, namely that the monthly repayments to the Lender took up the majority of Mrs C and Mr S's disposable income. For the reasons I have given here though, I am unable to agree. From the evidence I have referred to here, it appears that Mrs C and Mr S's monthly gross income (and consequently their monthly disposable income) was a degree greater.

It is for these reasons that I am not satisfied that the monthly loan repayments of £251.48 were actually unaffordable for Mrs C and Mr S such that I could reasonably conclude that they had lost out as a result. It follows that there is no reasonable need for me to go on to consider whether the credit relationship with the Lender was unfair to them as a consequence.

#### S140A conclusion

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

#### **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 Mrs C and Mr S's Section 75 claim, 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 Mrs C and Mr S.

#### **My final decision**

For the reasons set out above, my final decision is that I don't uphold this complaint.

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

Claire Woollerson  
**Ombudsman**