DRN-6073046

The complaint

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

What happened

Mr and Mrs P were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 1 November 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,820 fractional points at a cost of £6,049 (the 'Purchase Agreement').

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

Mr and Mrs P paid for their Fractional Club membership by taking interest free finance of £10,041 from the Lender in their joint names (the 'Credit Agreement'). This consolidated the outstanding balance of a previous loan taken from a different finance provider.

Mr and Mrs P traded in their Fractional Club membership towards a further purchase in April 2019. In doing so they gave up their rights to their share in the Allocated Property.

Mr and Mrs P – using a professional representative (the 'PR') – wrote to the Lender on 4 November 2021 (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 Mr and Mrs P's letter as a claim, which it did not accept, so the PR referred their complaint to the Financial Ombudsman Service. As part of its submission for a different complaint made by Mrs P, the PR sent in a statement from Mr and Mrs P, dated 10 November 2020. This set out their recollections of their relationship with, and purchases from, the Supplier.

After the complaint was submitted to this Service the Lender reconsidered their claim, but again did not uphold it. So, Mr and Mrs P's complaint was assessed by an Investigator at this Service who, having considered the information on file, rejected it on its merits.

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

The provisional decision

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

In the PD I said:

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

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

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 Mr and Mrs P were:

(1) *Told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true.*

(2) *Told by the Supplier that Fractional Club membership was an "investment" when that was not true.*

However, telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. After all, a share in an allocated property was, by its very nature, an investment. And while, as I understand it, the sale of the Allocated Property could be postponed in certain circumstances according to the Fractional Club Rules, Mr and Mrs P say little to nothing to persuade me that they were given a guarantee by the Supplier that the Allocated Property would be sold on a specific date when such a promise would have been impossible to stand by given the inevitable uncertainty of selling property some way into the future. And as there's nothing else on file to support the PR's allegation, I'm not persuaded that there was a representation by the Supplier on the issue in question that constituted a false statement of fact.

So, while I recognise that Mr and Mrs P 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 75 of the CCA: the Supplier's Breach of Contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a

right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mr and Mrs P say that they could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays for instance. Some of the sales paperwork likely to have been signed by Mr and Mrs P states that the availability of holidays was/is subject to demand. It is also important to note that this contract was only in existence for some five months before it was traded in, and there has been no evidence submitted to show Mr and Mrs P were unable to use it in the way they were promised. So, I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr and Mrs P any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

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

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale, nor that the contract was breached. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mr and Mrs P 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; and*
4. *The inherent probabilities of the sale given its circumstances.*

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

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

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

The PR says, for instance that:

1. *The right checks weren't carried out before the Lender lent to Mr and Mrs P; and*

2. *Mr and Mrs P were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.*

However, as things currently stand, neither of these strike me as a reason why this complaint should succeed.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs P was actually unaffordable, before also concluding that they lost out as a result, and then consider whether the credit relationship with the Lender was unfair to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr and Mrs P.

I acknowledge that Mr and Mrs P may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. They also went on to make a further purchase from the Supplier only five months later, which I find hard to accept if, as is attested, they only made this purchase due to the pressure they were put under. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs P made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

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

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

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

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr and Mrs P 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 (if there was one) had on the fairness of the credit relationship between Mr and Mrs P and the Lender under the Credit Agreement and related Purchase Agreement, as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

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

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mr and Mrs P decided to go ahead with their purchase. I'm simply not persuaded that was the case. I'll explain.

As I've said, when the complaint was referred to this Service, Mr and Mrs P's statement setting out their recollections of their purchases from the Supplier was provided.

Their statement reads as follows[1]:

2014

> *"On 9th June 2014 we purchased 1200 Fractional Points with [the Supplier]. We were on holiday and we met with the sales team. Prior to the holiday we were told that we would have to attend a short 30minute meeting that would not require any commitment. However, this meeting lasted around 4 or 5 hours and was quite pressurising as the sales team kept asking us what we were looking for in our holidays.* ***We were attracted towards the product as we were shown quite private resorts that would allow us to relax in private quarters****. Our understanding was that we would be able to access points on a bi-annual basis, however this was not explained very well.* ***Additionally, we were told that we would be given a free holiday with this, which suited us due to***

[1] I have headlined the purchase dates for clarity and the bold type is my emphasis

our children turning 18 and 21**. Additionally, **we were told that this product would act as a financial investment whereby after a set period of time, we would be able to sell our points and we would at least make our money back, however would probably make a profit.

Therefore, we purchased 1200 Fractional Points with [the Supplier]. This cost £11 984 and we paid for this using a [redacted[2]] Loan."

2017

*"On 30th April 2017 we purchased 1050 Fractional Points with [the Supplier]. We were on holiday and we were invited to meet with the sales team to discuss our membership. This meeting was very pressuring as the sales team tried to persuade us that we did not have enough points to holiday where we wanted to be. **We were told that if we upgraded our points we could access buy one get one free holidays and free accommodation upgrades. This was attractive to us as we would be able to access more holidays in the year. Additionally, we were told that more points would improve our financial investment for the future.***

Therefore, we purchased 1050 Fractional Points with [the Supplier]. This cost £6984 and we paid this using a bank transfer from our savings…"

November 2018

*"At some point in November 2018 we purchased 1820 Fractional Points with [the Supplier]. **We were told that if we purchased more points we would be able to access more holidays. Again we were told that more points would improve our financial investment for the future.** Additionally, **we told the sales team that we were due to retire and were keen to rent a property in Spain. However, we were told that if we upgraded our points we would be able to access 6 weeks in a townhouse in Spain.** However, this never materialised and we found that we were actually very limited in accommodation.*

Therefore, we purchased 1820 Fractional Points with [the Supplier]. This cost £6049 and we paid for this using a loan that was either with [redacted] or [redacted][3]. This loan as arranged by [the Supplier] and they suggested the provider that we used."

April 2019

*"On 22th April 2019 we purchased 2250 Fractional Points with [the Supplier]. **We were again told that as we were due to retire, these additional points would allow us to access more accommodation and would allow us to access our weeks in Spain, while taking the family with us on an additional holiday. We were also told that when we sold this membership, we could expect to receive 20% investment return.** However, we have still found that the availability and choice of accommodation is very limited and we are also limited as to what day we are able to book into the accommodation. We have normally found that the standard is very high, however on one occasion we were placed in an old room, as opposed to a newly refurbished room. We were also never told that we would have to pay an additional fee to convert to normal points. Additionally, we were originally told that the accommodation was exclusive to members only and therefore we should put our sons names on the deeds to allow them to access the accommodation. However we did not know that this would leave our sons liable for the finance agreements. Additionally, we have now found that non-members are actually able to access the same accommodation, for less than what we are paying for maintenance fees, which have increased over the years. I have now stopped paying the maintenance fees (November 2020), after following leal [sic] advice. Our financial*

[2] Redacted as this loan is not the subject of this complaint
[3] Redacted as this loan is not the subject of this complaint

situation has now changed as [Mr and Mrs P] is on furlough and I am due to retire next summer.

Therefore, we purchased 2250 Fractional Points with [the Supplier]. This cost £12 924 and we paid for this using a [redacted][4]. This loan was organised by [the Supplier] and this was the only provider that we were offered. This loan is still being paid off."

The statement sets out, for each sale, how the memberships were marketed as improving the holiday rights they would give Mr and Mrs P, along with a general description of what they were told about the investment element of the membership.

But their description of the Time of Sale being considered here (November 2018) is vague and contains no detail which says who said what, when and in what context.

And the way Mr and Mrs P have described this sale, along with all of the others, leaves me with the impression that it was the improved holidays that each upgraded membership would provide that was the key and driving motivation for them. The holidays seem to me to be given much more emphasis and importance, and I am not persuaded that any breach of Regulation 14(3) was material to any of their purchasing decisions here – I think they would have pressed ahead with the purchase of the memberships for the holidays they could provide, irrespective of the investment element.

But it isn't only the original statement that I need to consider here. Mr and Mrs P also made a complaint to this Service about an unfair credit relationship with the finance provider who gave them a loan for their April 2018 purchase of fractional points. That complaint was assessed by an Investigator who didn't think it should be upheld. Following that Investigator's view, the PR provided a supplementary statement from Mr and Mrs P dated 9 January 2024. This read:

"We purchased a further 1540 points on 25/4/2018 as we were told this would increase our investment for our retirement and they were trying to persuade us to take a dream holiday to South Africa for a Safari. We were at the meeting for over 5 hours, we kept saying no thanks, so they would go away and speak to manager and come back with different offer then another colleague would come over to try another way of persuading us eventually they agreed to pay for the rest of years [sic] Maintenance costs if we agreed on that day.

Everytime [sic] we increased our points i [sic] would get them to show me how we would make a profit and they would write it down always showing we would make at least 15 to 20% profit once time [sic] to sell which was going towards our retirement fund to spend time abroad in winter."

There is additional information here, both in regard to the April 2018 sale, and all of the other sales, including the Time of Sale I am considering here. And on the face of it, it does seem to suggest that the Fractional Club was sold and/or marketed to Mr and Mrs P as an investment which would lead to a profit. But I don't feel I can place much weight on this statement.

It was submitted following the Investigator's view, which set out why she didn't think the credit relationship with the Lender was unfair to Mr and Mrs P in that case. It was also submitted following the Judicial Review in 'Shawbrook & BPF v FOS'[5] in 2023 which found,

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[4] As above

[5] *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*').

in two separate complaints, that the Financial Ombudsman Service had correctly said that the particular credit relationships being considered had been rendered unfair for the purposes of Section 140A of the CCA as a result of a breach of Regulation 14(3) by the timeshare suppliers.

There is additional detail added in the supplementary statement when compared to what they said previously about what happened at each of the sales presentations. The supplementary statement says they got the sales representative, at each sale, to write down for them that they would make "at least 15 to 20% profit". This is particularly detailed, and I find it hard to understand how this detail was not included in their original statement as it is important and goes to the very heart of their complaint. And it seems unlikely to me that their memory of the events would have improved three years after they originally set out what they remembered.

So, I think there is a real risk that Mr and Mrs P's later recollections have been tainted, even subconsciously, by the complaints process, what had been said by the PR in their post-view discussions, and even by the wider conversations around timeshares, which it is likely that Mr and Mrs P would have had an interest in, given they had active complaints with this Service regarding this exact subject.

So, I do not feel I can place much, if any, weight on what has been said in the supplementary statement.

So, given what I have set out above, I am not persuaded that the investment element was a motivation for Mr and Mrs P when they decided to purchase the Fractional Club membership at the Time of Sale. That doesn't mean they weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs P 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 (if it occurred) was likely to have been material to the decision they ultimately made.

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

Mr and Mrs P's Commission Complaint

I note that one of Mr and Mrs P's other concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. The Supreme Court's recent judgment Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 ('Johnson, Wrench and Hopcraft') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer–credit brokers. So, once the implications of that judgment become clear, I will finalise my findings on this complaint.

Conclusion

In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and if I put the issue of commission to one side for the time being, I am not persuaded that the Lender was party to a credit relationship with Mr and Mrs P under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate them.

But, as I've already said, once the implications of that judgment become clear, I will finalise my findings on this complaint."

The responses to the provisional decision

The Lender responded to the PD and accepted it. The PR, on Mr and Mrs P's behalf, also responded but did not accept it, and provided some further comments and evidence that it wished to be considered. Included in this was an email sent by Mrs P to the PR dated 14 October 2025.

This read, as far as is relevant here:

> *"On all purchases we made it was always pointed out at end of contract time we would make a profit towards our retirement and also while profit was building up we could enjoy the holidays provided with our family.*
>
> *At the meeting in 2017 after lengthy discussions I explained I had been made redundant in 2015 after 34 years with same company and we felt unsure about future with finances as nothing felt secure anymore but they persuaded me it was a good investment opportunity to use part of my redundancy money as they kept saying we would just dwindle money away if we didn't invest it.*
> *My husband and I then discussed and thought what they were saying would gain more than putting in savings accounts in bank."*

Following these submissions, and further to my PD, I set out to both sides how I was not persuaded that Mr and Mrs P's credit relationship with the Lender was unfair to them for reasons relating to the commission arrangements between it and the Supplier.

The PR responded to say it had nothing further to add in relation to the commission arrangements, but maintained that the complaint ought to be upheld for the other reasons it set out following the PD.

Having received the relevant responses from both sides, I am now finalising my decision.

The legal and regulatory context

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

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

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

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

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

The FCA's Principles

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

- Principle 6
- Principle 7
- Principle 8

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 sides, 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. This complaint was almost identical, save the date, price and number of points purchased, to the one made relating to the April 2018 sale and its associated credit agreement. And the arguments made by the PR in response to the PDs are also virtually identical. So, there is naturally a fair amount of repetition in the two decisions. But I would like to reassure Mr and Mrs P that I have considered and responded to each complaint on its own merits, while taking into account all of the evidence and wider circumstances.

The PR's further comments in response to the PD only relate to the issue of whether the credit relationship between Mr and Mrs P 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 P 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 didn't make any further comments in relation to those in their response to my PD. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on the PR's points raised in response.

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

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

As part of its recent submissions, the PR has provided further testimony from Mrs P in the form of an email, which I set out above. I accept that this further testimony does suggest that Mr and Mrs P, on each occasion that they made a fractional membership purchase, were told by the Supplier that they would make a profit, which they thought they could use towards their retirement.

However, with this evidence, in a similar way to the additional evidence that was submitted following the Investigator's view, there is a real risk that Mrs P's testimony has been coloured by what I said in the PD. In this later testimony, the emphasis is much more on the investment potential of the membership, and much less on the holidays it could provide. I find this difference in emphasis hard to understand because it is unlikely that Mrs P's memory of the events would have improved in the five years since making her original statement. So I think what she said in her original statement is better and more reliable evidence than her more recent testimony. On balance, the timing and way in which this evidence has been provided makes me conclude that I can place little weight on it. And although I can appreciate that (in the 2017 sale – not the sale being considered here) Mr and Mrs P thought it would be a good idea to use her redundancy money towards that purchase, I think this was just as likely due to it being better than taking an interest-bearing loan, rather than any potential gains in the future. So this does not persuade me, on the balance of probability, that this (or the subsequent purchases, including the one I am considering here) were made for the investment element of the memberships.

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

The PR has also reiterated that the judgment handed down in *Shawbrook & BPF v FOS* asserted that the relevant question in this circumstance is whether the breach of Regulation 14(3) was a material factor in the decision to purchase, not whether it was the only factor or principal one. It feels that the testimony Mrs P has provided demonstrates that this was the case. But, as I explained in my provisional decision, I'm not persuaded, from the testimony that I feel able to place weight on, that Mrs P has adequately demonstrated that the promise of profit was a motivating factor in their decision to move ahead with the purchase – principal or otherwise. And I remain unpersuaded that this was the case having considered Mrs P's and the PR's submissions following my PD.

Ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr and Mrs P's purchasing decision. I think it likely that they would have made the purchase anyway for the holidays it could provide.

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

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

My final decision

For all of the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 10 February 2026.

Chris Riggs
Ombudsman