

The Complaint

Mr and Mrs J'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.

Background to the Complaint

Mr and Mrs J were members of a timeshare provider (the 'Supplier') having purchased a trial membership from it in July 2015. But the product at the centre of this complaint is their membership of a timeshare that I will call the 'Fractional Club' – which they bought on 2 August 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 900 fractional points at a cost of £14,684 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs J 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 J paid for their Fractional Club membership by taking finance of £18,934 from the Lender (the 'Credit Agreement'). This finance included £4,250 to pay off some outstanding finance with a different provider relating to Mr and Mrs J's existing trial membership.

Mr and Mrs J – using a professional representative (the 'PR') – wrote to the Lender on 30 August 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns have not changed since they were first raised, and as both sides are familiar with them, it is not necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr and Mrs J's concerns as a complaint and issued its final response letter on 18 March 2024, rejecting it on every ground. A further letter was sent to the Lender on 17 September 2024, setting out Mr and Mrs J's concerns with their membership.

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.

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

I issued a provisional decision ('PD') dated 21 November 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 is 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 here.

What I’ve provisionally decided – and why

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 does not dispute that the relevant conditions are met. But for reasons I will come on to below, it is not necessary to make any formal findings on them here.

The Lender rejected Mr and Mrs J’s claim on multiple grounds. I have considered the Lender’s response, but even if I were to find the Lender should not have declined the claim for the reasons it did, I cannot reasonably expect the Lender to meet that claim. That is because I need to take into account the Limitation Act 1980 (the “LA”).

Mr and Mrs J purchased their membership on 2 August 2015. Although a court is only able to make a ruling under the LA, as it is relevant law, I have also considered any impact this may have on Mr and Mrs J’s claim under Section 75 of the CCA.

A claim under Section 75 is a “like” claim against the creditor. It essentially mirrors the claim Mr and Mrs J could make against the Supplier. A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967.

And the limitation period to make such a claim expires six years from the date on which the cause of action accrued (see Section 2 of the LA). But a claim under Section 75, like this one, is also “an action to recover any sum by virtue of any enactment” under Section 9 of the LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued here was the Time of Sale. I say this because Mr and Mrs J entered into the purchase of the timeshare product at that time based upon the alleged misrepresentations of the Supplier – which Mr and Mrs J say they relied upon. And as the Credit Agreement with the Lender provided funding to

help finance these purchases, it was when they entered into the Credit Agreement that they allegedly suffered the loss.

Mr and Mrs J first notified the Lender of their Section 75 complaint on 30 August 2022. As more than six years had passed between the Time of Sale and when they first put their complaint to the Lender, I cannot conclude that the Lender should accept responsibility for such a claim.

However, I have considered whether these alleged misrepresentations could have been something that caused an unfair credit relationship.

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

There are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I am to consider this complaint in full – which is what I have done next.

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

- 1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;*
- 2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
- 3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;*
- 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 Mr and Mrs J and the Lender.

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

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

However, I have firstly considered whether the misrepresentations they allege were made by the Supplier in the context of their Section 75 claim could have caused any unfairness for the purposes of Section 140A.

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 J were:

- 1. Told that they had purchased an investment that would “considerably appreciate in value”.*
- 2. Promised a considerable return on their investment because they were told that they would own a share in a property that would considerably increase in value.*
- 3. Told that they could sell their Fractional Club membership to the Supplier or easily to third parties at a profit.*

4. Made to believe that they would have access to “the holiday apartment” at any time all year round.

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 is not any accompanying 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 is possible that Fractional Club membership was misrepresented at the Time of Sale for one or both of those reasons, I do not think it is probable. They have given little to none of the colour or context necessary to demonstrating that the Supplier made false statements of existing fact and/or opinion. And as there is not any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for these reasons, I do not think it was.

So, while I recognise that Mr and Mrs J and the PR have concerns about the way in which Fractional Club membership was sold by the Supplier, I do not think this caused any unfairness in Mr and Mrs J’s credit relationship with the Lender such that it warrants a remedy.

Turning to the points specifically raised in relation to the potential unfairness of the relationship between Mr and Mrs J and the Lender, the PR says that the right checks were not carried out before the Lender lent to Mr and Mrs J. I have not 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 Mr and Mrs J 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 J.

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 was not permitted to enforce the Credit Agreement. However, it looks to me like Mr and Mrs J 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 does not look like it was unaffordable for them, even if the Credit Agreement was arranged by a broker that did not have the necessary permission to do so (which I make no formal finding on), I cannot see why that led to a financial loss for Mr and Mrs J – 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 am not persuaded that it would be fair or reasonable to tell the Lender to compensate them, even if the loan was not arranged properly.

I acknowledge that Mr and Mrs J 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 also signed a form at the Time of Sale which stated their withdrawal rights and I can see

they were given a 14-day cooling off period. Mr and Mrs J have not provided a credible explanation for why they did not cancel their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs J 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 do not think that Mr and Mrs J'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 is 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 Mr and Mrs J'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 Mr and Mrs J 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 Mr and Mrs J 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 does not 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 J 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 Mr and Mrs J, 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 is equally possible that Fractional Club membership was marketed and sold to Mr and Mrs J 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 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 Mr and Mrs J 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 J 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.

To help me decide this point, I've carefully considered what Mr and Mrs J have said in the course of their complaint about how the membership was sold to them and their motivation for taking it out.

As I've stated above, it is said within the Letter of Complaint that Mr and Mrs J were told that they had purchased an investment that would increase in value and were promised a considerable return. There was no further detail underpinning these statements within the Letter of Complaint.

The PR has provided a statement from Mr and Mrs J containing their recollections from the Time of Sale. 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. There is very little reference to the fact that this product was sold as an investment within Mr and Mrs J's six-page witness statement and it is one of the last points that they mention, saying:

“Worst was even the fact that we were told that the purchase price for our fractional ownership products would be an investment which would see a profit when the property is sold. We were led to believe that we owned a fraction of the apartment, similar to a leasehold flat, which had a monetary resale value that could be recouped at the end of the term. We now understand that [sic] this is a timeshare, and has little or no value and is unlikely to be sold with repayment of our purchase price and profits as advised”.

I accept there is a possibility that the Supplier may have positioned Fractional Club membership as an investment, but I need to establish whether such positioning was material to Mr and Mrs J’s decision to purchase their membership. And I do not think there is anything in what they have said which leads me to think that it was.

In my opinion, the crux of their witness statement seems to point to the fact that they purchased a Fractional Club membership because of the holiday rights it provided. Mr and Mrs J say they were told their “trial membership did not meet our needs as a family of six and that we could upgrade our membership to a full club membership”. Mr and Mrs J described the Supplier’s main selling points as “we were not fixed to any particular week or resort...” and “we will no longer have to pay a booking fee, when we book our holidays...”. If the promotion of their membership as an investment was the key reason Mr and Mrs J purchased their membership, I would have expected them to place much more emphasis on this within their statement. What’s more, Mr and Mrs J say that “it was sold to us as holiday resorts” and say they “trusted that the staff had our best interest at heart and wanted to provide us with high quality, good value and excellent family holidays”.

My overriding impression is that Mr and Mrs J’s decision to purchase was primarily motivated by the holiday choices and the quality of holidays they believed would be available to them under their Fractional Club membership. Nothing in what they have said suggests to me that the investment element of the Fractional Club membership was a material factor in their decision to purchase it.

That does not mean they were not interested in a share in the Allocated Property. After all, that would not be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs J themselves do not persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I do not think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision Mr and Mrs J 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 J’s decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr and Mrs J 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

The PR says that Mr and Mrs J were not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership. The PR also says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

As I have already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I acknowledge that it is also possible that the Supplier did not give Mr and Mrs J sufficient information, in good time, on the various charges they could have been subject to as Fractional Club members in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mr and Mrs J nor the PR have persuaded me that they would not have pressed ahead with their purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I cannot see that any such terms were operated unfairly against Mr and Mrs J in practice, nor that any such terms led them to behave in a certain way to their detriment. And with that being the case, I am not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

Insolvency of the Supplier and its implications on the Credit Agreement

The PR argues that, because the Supplier's Spanish based sales companies have closed, Mr and Mrs J will not recover any amounts that are expected to be awarded by the Spanish court. But this is of no impact on the complaint because (1) I cannot see that the Supplier (i.e., company that entered into the Purchase Agreement) is itself the subject of a court judgment in Mr and Mrs J's favour nor can I see that the Lender has been party to any court proceedings and (2) even if he had a claim for something, there is no explanation as to why the Lender would be responsible to answer it.

Overall, given the facts and circumstances of this complaint, I am not persuaded that it would be fair or reasonable to uphold it 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 J'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 them."

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 J but 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'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 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 in the main relate to the issue of whether the credit relationship between Mr and Mrs J 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 J 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 it did not make any further comments in relation to those in their response to my PD. Indeed, it has not said it disagrees 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 J 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 Fractional Club 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 J and the Lender given their circumstances at the Time of Sale.

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 Mr and Mrs J 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 Mr and Mrs J to provide some evidence for the claim they are 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 Mr and Mrs J 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 Mr and Mrs J 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 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 J to enter into the Purchase Agreement and the Credit Agreement remains an important consideration.

In my PD I explained the reasons why I did not think any breach of Regulation 14(3) had led Mr and Mrs J 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 Mr and Mrs J in the course of their complaint. I recognise the PR has interpreted Mr and Mrs J'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 have taken in assessing this aspect of the complaint, believing that I have detracted from the judgment in *Shawbrook & BPF v FOS*¹ and the case law that contributed to it, by requiring Mr and Mrs J to have been "primarily or mainly motivated" by the investment element in order to uphold the complaint. Although the PR states that the underlying reason for Mr and Mrs J agreeing to upgrade at the Time of Sale was down to the intrinsic value of the Allocated Property, Mr and Mrs J's recollections do not persuade me that this was the case.

Having reconsidered everything again, I am not persuaded that the investment element of the Fractional Club membership was a material factor in their decision to purchase it. In my view, I still consider that Mr and Mrs J went ahead with this purchase because of the holiday options and quality of holidays it provided them with - in comparison to their existing Trial membership. The PR says that they already had access to the same style of holidays and experiences under their existing membership but I don't agree with this assertion. Mr and Mrs J's Trial membership provided them with a set number of holidays to use over a specific period of time.

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 Mr and Mrs J's decision to purchase the Fractional Club membership.

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 J'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 them.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs J to accept or reject my decision before 18 February 2026.

Sameena Ali

¹ 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').

Ombudsman