DRN-6081019

The complaint

Mr and Mrs C'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 C were members of a timeshare provider (the 'Supplier') – having purchased a number of European Collection ('EC') points 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 28 May 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 14,000 fractional points at a cost of £23,520, but after trading in 12,500 of their existing EC points, for which they were given a conversion rate of £1/point, they ended up paying £11,020 (the 'Purchase Agreement') for their Fractional Club membership.

Unlike their EC points, Fractional Club membership was asset backed – which meant it gave Mr and Mrs C 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 C paid for their Fractional Club membership by a part-payment on a card, and taking finance for the remainder of £8,816 from the Lender (the 'Credit Agreement').

Mr and Mrs C made a further purchase in December 2013, where they traded in their remaining 3,500 EC points towards further fractional points. This subsequent purchase is not the subject of this complaint and is included here for background purposes only.

Mr and Mrs C – using a professional representative (the 'PR') – wrote to the Lender on 18 December 2018 (the 'Letter of Complaint') to raise a number of different concerns about their Fractional Club membership and the associated Credit Agreement. 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 C's concerns as a complaint and issued its final response letter on 31 January 2019, 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, thought that it ought to be upheld.

The Investigator thought that the Supplier had marketed and sold Fractional Club membership as an investment to Mr and Mrs C at the Time of Sale in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'). And given the impact of that breach on their purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mr and Mrs C was rendered unfair to them for the purposes of Section 140A of the CCA.

The Lender did not agree with the Investigator's assessment - which is why it was passed to me.

The provisional decision

I considered the matter, and I didn't think the complaint ought to be upheld. So, I issued a provisional decision (the 'PD') setting out my initial thoughts on the merits of Mr and Mrs C'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. I understand that this is likely to be disappointing to Mr and Mrs C, and I'm sorry about that. But I have come to my provisional findings on this complaint on the balance of probabilities – that is what I think is most likely to have happened – based on both the evidence provided and the wider circumstances.

And also, before I explain why I don't think this complaint ought to be upheld, 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 C 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 C 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 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 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 C 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 C states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday on a number of occasions. So, whilst I accept that they may not have been able to take certain holidays, 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 C 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 or that there was a breach of contract. 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 C 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 C and the Lender.

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

Mr and Mrs C'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 C; and*
2. *Mr and Mrs C 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 C 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 C.

I acknowledge that Mr and Mrs C 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. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs C 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 C'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 Mrs C 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 C 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 C 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 C, 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.

But 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 C 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 C 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 C 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, and when considering the wider circumstances, I am simply not persuaded that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr and Mrs C decided to go ahead with their purchase. I'll explain.

As part of the PR's initial submissions to this Service, it sent in a statement from Mrs C, dated 18 December 2018. This set out her and Mr C's recollections of their two fractional

points purchases in May and December 2013. As far as the Time of Sale is concerned, the statement read:

> *"In May 2013, we were on holiday and had to attend a mandatory update information meeting. This was, in fact, a high pressure sales pitch that lasted 2-3 hours. We were advised that availability would be better if we upgraded to fractional points but it is actually worse now since you have to book even further in advance to get a holiday. We have struggled to book our desired holidays. The representatives advised us that the resorts were exclusive we you can book them online via booking.com. In fact, a friend's son booked a resort (Los Amigos in Spain) I could not get access to for 33% less than it would have cost me as a member. We were advised that the standard of accommodation would be high but it was variable (it was never as good if it was Interval International one). The representatives advised us that the purchase was an investment in property, that the property would be sold in 15 years and we would get our money back (if not a profit). With regards to the finance agreement, we were offered no other creditors, had not heard of the creditor before and did not speak to the creditor directly. We were rushed though the terms and conditions and given no time alone to reflect on it. The paperwork was filled in for us and all we had to do was sign.*
>
> *Therefore, on 28"' May 2013, we purchased 2 Fractional Weeks in Unit 04A in Jardines del Sol for £11,020 using a Shawbrook Bank loan (2,204 was paid via credit card). We traded in 12,500 points to get that price."*

Then on 26 January 2024 the PR resubmitted the statement, showing a date stamp 3 January 2019, with a minor hand-written amendment as shown below:

In May 2013, we were on holiday and ~~had to attend a mandatory~~ were persuaded to attend an update information meeting. This was, in fact, a high pressure sales pitch that lasted 2-3 hours. We were advised that availability would be better if we upgraded to fractional points but it is actually worse now since you have to book even further in advance to get a holiday. We have struggled to book our desired holidays. The representatives advised us that the resorts were exclusive we you can book them online via booking.com. In fact, a friend's son booked a resort (Los Amigos in Spain) I could not get access to for 33% less than it would have cost me as a member. We were advised that the standard of accommodation would be high but it was variable (it was never as good if it was Interval International one). The representatives advised us that the purchase was an investment in property, that the property would be sold in 15 years and we would get our money back (if not a profit). With regards to the finance agreement, we were offered no other creditors, had not heard of the creditor before and did not speak to the creditor directly. We were rushed though the terms and conditions and given no time alone to reflect on it. The paperwork was filled in for us and all we had to do was sign.

Although there is nothing to say who the amendment above was made by, I think it is safe to assume it was by or on behalf of Mrs C at her request, and it makes no difference to the crux of the statement in any event.

But I am not persuaded by what Mrs C has said in her statement, that the potential for a profit was why they ultimately decided to make the Fractional Club membership purchase. On my reading of what she has said, it seems they were attracted to the increased number of points because of the potential for improved availability, exclusivity and quality of the accommodation, and it seems she was disappointed that the membership didn't go on to provide all of this. It was only after these considerations that Mrs C talks about how they were told that the membership was an investment in property and that they would get their money back (if not a profit). But I'm just not persuaded that this was a motivation for them, because Mrs C has just described what she remembers being told – it is just a description. It offers me no insight into whether this was the reason they bought it. And the fact that Mrs C first talked about how they were told the purchase would improve the holidays that were

available to them, suggests to me that it was the increased number of points they got (which by their very nature gave them more holiday rights) which was the driver behind their purchase. They were, after all, already members of the Supplier, so they were clearly interested in holidays, and specifically the type of holidays the Supplier provided.

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 if, as the PR now attests, Mr and Mrs C bought the membership for the potential profit the sale of the Allocated Property provided, I find it hard to understand why Mrs C hasn't said so in her statement.

So, as Mr and Mrs C 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.

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 C'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 for the improved holiday rights, 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 C and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

Mr and Mrs C's Commission Complaint

I note that one of Mr and Mrs C'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 I know more about the commission arrangements relevant to Mr and Mrs C's complaint, I will address this aspect of the complaint before finalising my thoughts overall.

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 C 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."

The responses to the provisional decision

The Lender responded to the PD and accepted it, and provided details of the commission it had paid to the Supplier for arranging the Credit Agreement.

The PR, on Mr and Mrs C's behalf, also responded but did not accept it, and provided some further comments and evidence that it wished to be considered. Part of its submission was further testimony from Mr and Mrs C, dated 27 November 2025. This began by setting out

how the sales process at the Time of Sale left them feeling *"confused and exhausted".* It then went on to say that they were persuaded to sign up for the following three reasons:

1. "Despite what it says in the contract it was portrayed as being an investment. The argument put forward was that after fifteen years what well maintained property does not increase in value?
2. On purchasing the current timeshare point we owned, we had been informed that should we pass away whilst the contract was still active they would be part of our estate and would be passed on to our beneficiaries. In 2013 this had become a cause for concern for us as we knew our son and daughter could not afford to pay the management fees which were £1850 per year at that time and had increased a lot over the last few years. We were persuaded that to avoid conflict with the company, changing to Fractional ownership would get rid of this problem.
3. To increase the pressure we were told that the offer on the table that day could not be repeated (we were on holiday at the time in Tenerife) and if we did not sign up then that the offer would be withdrawn. We were told there were a limited number of these opportunities and they were selling fast."

They then concluded by setting out how they were never able to book a holiday in Portugal or in any of the more popular resorts, even in low season.

Following these submissions, and further to my PD, I set out to both sides how I was not persuaded that Mr and Mrs C'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:

<u>The Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010</u>

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3

- Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

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.

The PR has stated that I've been inconsistent in my approach when compared to previous decisions issued by the Service, and has provided examples it feels demonstrates this. But my decision is based on consideration of Mr and Mrs C'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's further comments in response to the PD only relate to the issue of whether the credit relationship between Mr and Mrs C 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 C as an investment at the Time of Sale, and that they were put under undue pressure to make the purchase 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?

The PR has reiterated that the pressure that Mr and Mrs C were put under at the Time of Sale has rendered the Credit Agreement unfair for the purposes of Section 140A of the CCA. And Mr and Mrs C have said the following in their latest testimony:

> *"The pressure applied to us to purchase Fractional Club membership cannot be understated. "Weary" does not seem a strong enough word to describe how we felt. Confused and exhausted might be a better description. The presentation and discussion took more than three hours and the pressure was relentless. We had attempted to make our excuses and leave but eventually we were persuaded to sign up…"*

But I can't see that this shows they were left feeling as if they had no choice but to make the purchase when they simply did not want to. And as I've said in the PD, they were given a 14-day cooling off period in which they were able to cancel the Purchase Agreement and Credit Agreement without having to give a reason, and they haven't provided any explanation for why they didn't do this if, as they now attest, they only bought the membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier. And they went on to make a further purchase of fractional points from the Supplier only seven months later. I find this hard to believe if they only made the Fractional Club purchase due to the pressure they were put under.

Overall, therefore, I don't think that Mr and Mrs C's credit relationship with the Lender was rendered unfair to them under Section 140A because they were put under undue pressure by the Supplier at the Time of Sale.

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

As I explained in my PD, although I found there was a possibility that the Supplier breached Regulation 14(3) at the Time of Sale, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint, so I didn't think it necessary to make a formal finding on that particular issue for the purposes of the decision. And that was because I didn't think that the credit relationship between Mr and Mrs C 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 Mr and Mrs C which I set out above. I accept that this further testimony does suggest that when Mr and Mrs C made the Fractional Club membership purchase, they were told by the Supplier that it would increase in value.

However, with this evidence, there is a real risk that Mr and Mrs C's testimony has been coloured by what I said in the PD. And, on balance, the timing and way in which this evidence has been provided makes me conclude that I can place little weight on it, particularly as it contains assertions, in relation to their wish to avoid passing their existing membership on to their children, which weren't present in their original statement. I find it hard to understand how something, which appears to be very important to Mr and Mrs C, was not mentioned in the original statement when describing why they bought the membership.

I think it unlikely that their memory of the Time of Sale would have improved in the six years since they made their first statement. So, on balance, I think what Mr and Mrs C said in their original statement is the best evidence I have of what happened at the Time of Sale. And having considered everything, I am not persuaded that their purchase was motivated by their share in the Allocated Property and the possibility of a profit. So I don't think a breach of Regulation 14(3) (if there was one) by the Supplier was likely to have been material to the decision they ultimately made.

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

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 Mr C and Mrs C to accept or reject my decision before 12 February 2026.

Chris Riggs
Ombudsman