DRN-6099693

The complaint

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

What happened

I issued a provisional decision on Mr B and Miss W's complaint on 8 December 2025, in which I set out the background to the case and my provisional findings on it. A copy of that provisional decision is appended to, and forms a part of, this final decision, so it's not necessary to go over the details again. However, in very brief summary:

- Mr B and Miss W entered an agreement to buy a timeshare (the "Purchase Agreement") from a timeshare provider (the "Supplier") on 27 October 2015 (the "Time of Sale"), for £24,763, with a balance of £10,000 left to pay after the trade-in of a previous timeshare. This was financed by a loan of the same amount from the Lender (the "Credit Agreement").

- Like their previous timeshare, which had been purchased in 2013, the timeshare they purchased at the Time of Sale, was a type of asset-backed timeshare[1] which entitled Mr B and Miss W to more than holiday rights. It also entitled them to a share in the proceeds of a property named on their purchase agreement (the "Allocated Property") after their contract came to an end. The specific variation of timeshare Mr B and Miss W purchased entitled them to stay in the Allocated Property at a particular time of year.

- Mr B and Miss W later complained, via a professional representative ("PR"), to the Lender about a number of concerns which included misrepresentations by the Supplier giving them a claim against the Lender under Section 75 of the CCA, and matters giving rise to an unfair credit relationship between them and the Lender.

- The Lender failed to respond to the complaint and it was then referred to the Financial Ombudsman Service for an independent assessment.

In my provisional decision I said I didn't think the complaint should be upheld. Again, my full findings can be found in the appended provisional decision, but in very brief summary:

- The Lender had not been unfair or unreasonable in declining Mr B and Miss W's Section 75 claim because their claim had been time-barred under the Limitation Act 1980 by the time it had been brought to the Lender, giving the Lender a complete defence to it. I noted that the misrepresentations they had complained of could be considered as matters relevant to an assessment of the fairness of their credit relationship with the Lender instead, but I didn't think there had been any actionable misrepresentations that had rendered the credit relationship unfair to them because:

[1] These are sometimes referred to as "fractional" timeshares, and I'll use this term in my final decision.

- I didn't think it was likely the Supplier had given unqualified guarantees to them about the end date of their timeshare contract.

- If the Supplier had told them that the timeshare was an investment or that it included a share in a property, then this would not have been a misrepresentation because it was true. If the Supplier had told Mr B and Miss W that the product was desirable, then that appeared to have been a statement of opinion rather than fact.

- I didn't think it was likely the Supplier had made false statements about the availability or exclusivity of holiday accommodation. I noted that Mr B and Miss W did have a right to stay in the Allocated Property at a specific time of year, but that the paperwork indicated that, in general, accommodation was subject to availability.

- The Lender had not participated in a credit relationship with Mr B and Miss W that was unfair to them for any of the other reasons alleged by PR because:

  - There was insufficient persuasive evidence (given the limited state of evidence in this case in general) that the Supplier had breached the Consumer Protection from Unfair Trading Regulations 2008 when selling the timeshare.

  - Regardless of whether the Lender had carried out appropriate checks before lending to Mr B and Miss W, there was a lack of evidence the loan had been unaffordable for them at the time.

  - There was insufficient persuasive evidence that Mr B and Miss W had only signed up for the timeshare because their ability to make a choice had been significantly impaired by pressure from the Supplier. They had been given a cooling-off period which they had not used to cancel their purchase.

  - While unfair terms within the Purchase Agreement had been referred to by PR, and I thought it was possible that some of the terms mentioned had the potential to be operated in an unfair way, I couldn't see that these terms had been operated in an unfair way with respect to Mr B and Miss W, would be likely to do so in future, or had prejudiced their purchasing decision.

  - It was *possible* the Supplier had breached Regulation 14(3) of the Timeshare Regulations by marketing the timeshare to Mr B and Miss W as an investment, but there were problems with their testimony which led to me being unable to draw a conclusion that either the Supplier had breached Regulation 14(3) at the Time of Sale, or that this had played a material part in their purchasing decision. In particular:

    - Mr B and Miss W had been asked to recall what had happened many years later and their witness statement (which appeared to have only had input from Miss W) contained numerous inaccuracies. They referred to purchases they hadn't made, failed to mention an important purchase they had made (the 2013 purchase of a fractional timeshare), and said they'd bought products from the Supplier which the Supplier did not in fact sell.

    - Mr B and Miss W said that it was in 2015 that the Supplier had introduced the concept of a fractional timeshare to them and sold it as

an investment. This seemed unlikely to be correct as Mr B and Miss W had bought a fractional timeshare from the Supplier in 2013. I thought it was likely either that Mr B and Miss W were mixing up details between their purchases, or had the 2013 purchase in mind (which this complaint was not about) when referring to the purchase which was the subject of this complaint. I felt I could attach very little weight to their recollections as a result – not enough to conclude that the Supplier had marketed or sold the timeshare to them at the Time of Sale as an investment, or that this had been material to their purchasing decision.

- While PR had alleged the Lender had paid a commission to the Supplier, no commission had been paid on this occasion, and there was nothing else about the commission arrangements between the Lender and Supplier which I thought should lead to the complaint being upheld.

I invited the parties to the complaint to respond to my provisional decision. The Lender accepted the provisional decision. PR didn't agree with the provisional decision, and asked me to consider various additional points relating to the alleged sale of the timeshare as an investment. The case has now been returned to me to decide.

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 3.7.3R
- CONC 4.5.3R
- CONC 4.5.2G

The FCA's Principles

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

- Principle 6
- Principle 7
- Principle 8

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

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

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

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

PR's comments in response to the provisional decision relate only to the issue of whether the credit relationship between Mr B and Miss W and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to Mr B and Miss W as an investment at the Time of Sale, and the impact of this on their purchasing decision.

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

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

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

PR says it disagrees with my assessment of Mr B and Miss W's witness statement. I could summarise its arguments as follows:

- Mr B and Miss W's account of how the product had been marketed and sold had remained consistent throughout correspondence – including the original complaint to the Lender and a form submitted to the Financial Ombudsman Service.

- It was irrelevant that Mr B and Miss W couldn't recall precise dates this many years on. The complaint ought to be judged on the balance of probabilities and not on a forensic analysis of Mr B and Miss W's ability to recall "peripheral chronology". It was holding Mr B and Miss W to too high a standard.

- My provisional decision was inconsistent with what the courts had said about the assessment of evidence. While a consumer might not recall specific details such as dates, they might reliably recall the nature and effect of a sales pitch.

- My provisional decision was also inconsistent with numerous decisions issued by other ombudsmen at the Financial Ombudsman Service on similar facts. Minor inconsistencies or errors with details had not been said to undermine the credibility of a consumer's testimony.

- My provisional decision had taken an inappropriately narrow definition of what constituted an investment or selling or marketing a timeshare as an investment. The Supplier's sales conduct in this case had rendered the credit relationship between Mr B and Miss W, and the Lender, unfair to them. It was inherently improbable that the

timeshare had been purchased for holiday-related reasons only, and not also because a) the Mr B and Miss W were attracted to the prospect of it being an investment and b) because the Supplier had marketed it improperly in that way.

I've thought carefully about PR's submissions, and I note that they are, in essence, reliant on the premise that Mr B and Miss W had made a few minor errors in their witness statement – not enough to call into question the accuracy of their recall this many years after the Time of Sale.

Assuming that premise is correct, then PR's arguments in response to the provisional decision seem perfectly reasonable. Of course the credibility of a person's recollections isn't necessarily undermined because they get a couple of minor details wrong. It's quite possible that premise was correct for the various cases PR has cited of other ombudsmen making different decisions on apparently similar facts.

But the problems with Mr B and Miss W's testimony aren't a case of them getting a few minor and inconsequential details wrong. I've already outlined the nature of the errors earlier in this final decision but I think it's worth doing so again.

The purchase history from the Supplier which was recalled by Mr B and Miss W was, unfortunately, almost completely inaccurate. They recalled making purchases of products in 2008 and 2009 which were not on the Supplier's record of their purchases, and which were not products the Supplier sold. They failed to recollect that the Time of Sale was not the first time they had bought a fractional timeshare from the Supplier, and they had in fact bought another one two years previously, which their 2015 purchase was an upgrade of.

For me, this raises two important problems which undermine the credibility of the testimony and mean I can't attach sufficient weight to it to arrive at the conclusions PR invites me to reach:

1. The extent of the errors calls into question the *general* accuracy of Mr B and Miss W's recollections in relation to their experiences with the Supplier.

2. The specific error in identifying the 2015 purchase as the first time the Supplier had introduced to them the concept of a fractional timeshare and sold it as an investment, when in fact that had been an upgrade of a fractional timeshare they'd bought in 2013, meant I had to question whether they were conflating the two purchases and/or had *meant* the 2013 purchase when they were ostensibly describing the 2015 purchase.

I'll add that point 2 above has some additional significance because, in my experience, the Supplier did not sell fractional timeshares in exactly the same way over the lifetime of it selling fractional timeshares, and it offered various different fractional timeshare products, some of which it would pitch in different ways depending on (for example) whether or not the prospective purchaser already had a fractional timeshare. The type of timeshare Mr B and Miss W bought in 2015 was a "Signature Collection" timeshare, which was often marketed to existing fractional timeshare owners (like Mr B and Miss W) as a means of guaranteeing access to a specific luxury apartment to holiday in.

In essence, it would have been possible for the Supplier to market or sell a timeshare to Mr B and Miss W in 2013 as an investment, and then sell an upgrade to them in 2015 on a different basis. So the apparent confusion or conflation of the purchases does limit the weight I can attach to their testimony.

I note that PR has not addressed any of the particular errors or inaccuracies I referred to in

the provisional decision – it has just dismissed them as not being important. So there isn't anything further for me to subject to analysis.

In light of the above, my conclusions regarding the alleged breach by the Supplier of Regulation 14(3) of the Timeshare Regulations at the Time of Sale remain the same. I don't think there's persuasive or credible evidence that this happened. It follows that I don't find the credit relationship between Mr B and Miss W, and the Lender, was rendered unfair to them for that reason.

My final decision

For the reasons explained above, and in the appended provisional decision, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Miss W to accept or reject my decision before 19 February 2026.

Will Culley
Ombudsman

I've considered the relevant information about this complaint.

Having done so, I've arrived at a different set of conclusions to our Investigator, so I'm issuing this provisional decision to give the parties to the complaint an opportunity to provide further submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is **22 December 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from Mr B and Miss W, or if they tell me they accept my provisional decision, I may arrange for the complaint to be closed as resolved without a final decision.

The complaint

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

What happened

Mr B and Miss W purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 27 October 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,540 fractional points at a cost of £24,763 (the 'Purchase Agreement'). These points could be used each year to book holiday accommodation, or alternatively Mr B and Miss W were entitled to holiday in a specific week of the year in a luxury apartment named on their purchase agreement.

It's apparent that Mr B and Miss W had a previous timeshare product with the Supplier, which was traded in against the purchase price. After trade-in, Mr B and Miss W were expected to pay £10,000 for their Fractional Club membership.

Fractional Club membership was asset backed – which meant it gave Mr B and Miss W more than just holiday rights. It also included a share in the net sale proceeds of the luxury apartment named on their Purchase Agreement (which I will call the 'Allocated Property') after their membership term ends.

Mr B and Miss W paid for their Fractional Club membership by taking finance of £10,000 from the Lender in joint names (the 'Credit Agreement'). It appears they had a previous loan with another lender which had been used to finance a previous purchase with the Supplier, but this was not consolidated into the new loan with the Lender.

Mr B and Miss W – using a professional representative ('PR') – wrote to the Lender on 28 June 2022 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.

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

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

1. told them that Fractional Club membership gave them an automatic right to exit the timeshare at an agreed date, when that was not true.
2. told them that they were buying an interest in a specific piece of "real property" when that was not true.
3. told them that Fractional Club membership was an "investment" which would probably net them a profit when that was not true.
4. told them that they would enjoy better holiday availability in more exclusive resorts and a higher standard of accommodation if they purchased Fractional Club membership, when that wasn't true.
5. told them the product was desirable and would quickly sell out, which wasn't true either.

Mr B and Miss W say that they have a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, they have a like claim against the Lender, who, with the Supplier, is jointly and severally liable to them.

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

The Letter of Complaint set out several matters which I've interpreted as reasons why Mr B and Miss W argue that the credit relationship between them and the Lender was unfair to them under Section 140A of the CCA. In summary, they include the following:

1. Fractional Club membership was marketed and sold to them as an investment in breach of regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').
2. The contractual terms setting out (i) the duration of their Fractional Club membership and (ii) the obligation to pay annual management charges for the duration of their membership were unfair contract terms under the Consumer Rights Act 2015 ('CRA').
3. They were pressured into purchasing Fractional Club membership by the Supplier.
4. The Supplier's sales presentation at the Time of Sale included misleading actions and/or misleading omissions under the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations') as well as a prohibited practice under Schedule 1 of those Regulations.
5. The decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness assessment.
6. The Supplier failed to provide sufficient information in relation to the Fractional Club's ongoing costs.
7. The Lender paid a secret commission to the Supplier.

The Lender failed to respond to the complaint, so Mr B and Miss W then referred the matter to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, thought it should be upheld. Our Investigator reasoned that the Supplier had wrongfully marketed the Fractional Club product to Mr B and Miss W as an investment, and they had gone ahead with the purchase because they hoped to make money from the product. This had rendered the credit relationship between them and the Lender unfair.

Mr B and Miss W accepted our Investigator's assessment. The Lender did not. I could summarise its reasons for disagreeing as follows:

- Disclaimers within the contemporaneous paperwork which explained that the product was not an investment, had been given insufficient weight by the Investigator.
- On the other hand, a witness statement attributed to Miss W had been given too much weight in view of its many inaccuracies.
- Contemporaneous notes made by the Supplier cast doubt on some of the complaint points. For example, there were notes which indicated there had been at least two conversations in which the management fees had been clarified.
- Mr B and Miss W had obtained significant holiday related benefits by upgrading to this product, over their existing product. This included more points to book accommodation, and the right to stay in higher quality accommodation.

Because no agreement could be reached, the case has been passed to me to decide.

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'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.

But 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

As both sides may already know, a claim against the Lender under Section 75 essentially mirrors the claim Mr B and Miss W could make against the Supplier. Certain conditions must be met if this protection is engaged – which are set out in the CCA. The Lender does not dispute that the relevant conditions are met in this complaint and I'm satisfied that they are.

However, I don't think Mr B and Miss W would have been able to make a successful claim under Section 75, for reasons I'll now explain.

At the time Mr B and Miss W notified the Lender of their claim, in June 2022, I think it would have been time-barred under the Limitation Act 1980 ("LA"). The LA sets out limitation periods (time limits) for bringing various types of legal claim. If a claim is brought too late, the respondent is likely to have a complete defence to the claim on that basis. For claims relating to misrepresentation, the limit normally runs six years from the date a person suffers damage as a result of the misrepresentation – such as entering into a contract and incurring liabilities they wouldn't have otherwise.

This means the time to bring a claim for misrepresentation would have been six years from the Time of Sale, so the limitation period for such a claim would have expired in October 2021, some months before Mr B and Miss W complained. However, the judgment in *Scotland & Reast* explains that, even if a limitation period has expired for a standalone misrepresentation claim, relevant misrepresentations that could be attributed to the Lender can be considered as part of the assessment of the unfairness of the credit relationship. So, I have gone on to consider those matters below.

However, I do not think the Lender is liable to pay Mr B and Miss W any compensation for the alleged misrepresentations of the Supplier as a result of Section 75. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

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

I have already explained why I am not persuaded Mr B and Miss W are able to make a successful Section 75 claim against the Lender. But Mr B and Miss W also says that the credit relationship between them and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time of Sale that they have concerns about. It is those concerns that I explore here.

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

1. The Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale; and
2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;
3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
4. The inherent probabilities of the sale given its circumstances.

I have then considered the impact of these on the fairness of the credit relationship between Mr B and Miss W and the Lender.

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

Mr B and Miss W's complaint about the Lender being party to an unfair credit relationship was also made for several reasons, all of which I set out at the start of this decision. Regarding the alleged misrepresentations which I referred to earlier and which could be relevant to an assessment of unfairness in the credit relationship, I don't think there was an actionable misrepresentation by the Supplier for the following reasons:

- PR says the Supplier told Mr B and Miss W their membership had a guaranteed end date but that wasn't true because the sale of the Allocated Property could be postponed, and there was a lack of clarity over how long the sale would take. However, there's nothing in the documents dating to the Time of Sale which leads me to believe that unqualified guarantees would have been given that the membership would come to an end on a specific date. The documents explain that the property would be marketed for sale after a set time, and I can't see that Mr B and Miss W were told anything different to that.

- It had not been untrue of the Supplier to tell Mr B and Miss W that they were buying a fraction or share of one of the Supplier's properties. Mr B and Miss W's share in the Allocated Property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while PR might question the exact legal mechanism used to give them that interest, it did not change the fact that they acquired such an interest. Similarly, it was not untrue of the Supplier to have told Mr B and Miss W that the Fractional Club membership was an investment, as the product clearly had an investment element to it. It was *prohibited* to market or sell the product in this way however, which I will come on to later.

- Regarding the lack of exclusivity and the standard of accommodation, Mr B and Miss W's membership did in fact entitle them to stay in a specific luxury apartment in a specific week of the year (if they wanted to do so). It's my understanding this apartment was both of a high standard and not available for non-members to book. So, in that sense, it was exclusive and it would therefore not have been false of the Supplier to claim this. Regarding exclusivity more generally, the contemporaneous documents I've seen relating to the other accommodation available through the membership do not say that the resorts in the Supplier's portfolio were exclusive to members. Resorts owned by the Supplier were described as "mixed use", while other resorts were described as resorts in which the Supplier had "secured accommodation…under its control" or which were "available through [our] partnerships with other resorts". None of this appears to state or imply that the resorts within the portfolio could only be booked by members. While I've no doubt the Supplier would have taken the opportunity to promote the quality of its resorts and services, I've not seen evidence that it made specific false statements about them.

- PR has also suggested holiday availability was misrepresented to Mr B and Miss W by the Supplier. The contemporaneous documents do not support an allegation however, that Mr B and Miss W were told they could holiday anywhere they wanted, whenever they wanted. The documents said that holidays (apart from the guaranteed week in the Allocated Property) would be subject to availability, bookings were on a "first come, first served" basis, and that accommodation during the school holidays in particular would need to be booked as far in advance as possible.

- Finally, regarding the allegation that the Supplier falsely claimed the membership was a desirable product, this appears to have been a statement of opinion, rather than fact. In order for such a statement to amount to a misrepresentation, it would normally need to be shown that the person who stated the opinion did not hold that opinion at the time. In practice, I think this would be very difficult to prove.

Moving to the various other matters which are said to have given rise to an unfair credit relationship, these include the allegation that the Supplier misled Mr B and Miss W and carried on unfair commercial practices which were prohibited under the CPUT Regulations. But given the limited evidence in this complaint, I am not persuaded that anything done or not done by the Supplier was prohibited under the CPUT Regulations.

PR also says that the right checks weren't carried out before the Lender lent to Mr B and Miss W. I haven't seen any information in this case which would allow me to make a determination on this either way. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I am not in a position to make such a finding) I would have to be satisfied that the money lent to Mr B and Miss W was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair to them for this reason. Again, from the information provided, I am not satisfied that the lending was unaffordable for Mr B and Miss W. Indeed, no evidence has been offered to support this claim. If there is any further information on this (or any other points raised in this provisional decision) that Mr B and Miss W wish to provide, I would invite them to do so in response to this provisional decision.

It's been alleged that Mr B and Miss W were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale. I'm aware that the Supplier's sales processes could be lengthy, and I acknowledge that Mr B and Miss W may have felt worn out by this. But they say little about what was said 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 haven't explained why they did not cancel their membership during that time if they had purchased it due to having felt pressured. And with that being the case, there is insufficient evidence to demonstrate that Mr B and Miss W made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

I'm not persuaded, therefore, that Mr B and Miss W's credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why they say their credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

Was Fractional Club membership marketed and sold at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations?

The Lender does not dispute, and I am satisfied, that Mr B and Miss W'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 membership of the Fractional Club as an investment. This is what the provision said at the Time of Sale:

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

But PR says that the Supplier did exactly that at the Time of Sale. So, that is what I have considered next.

The term "investment" is not defined in the Timeshare Regulations. In *Shawbrook & BPF v FOS*, the parties agreed that, by reference to the decided authorities, "*an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit*" at [56]. I will use the same definition.

As I've indicated already, Mr B and Miss W's share in the Allocated Property constituted an

investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But the fact that 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 B and Miss W as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that 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 B and Miss W, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was for the primary purpose of holidays and that the Supplier made no representations as to the future value of the share in the Allocated Property. So, it's *possible* that Fractional Club membership wasn't marketed or sold to Mr B and Miss W as an investment in breach of Regulation 14(3).

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

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

At this point, I think it's important to note some observations about the witness testimony available to me. In a case like this involving a face-to-face sales process where it has been alleged that certain things were said by one party to the other, the direct recollections of those involved is likely to be key evidence.

I have seen a witness statement from Miss W (Mr B does not appear to have provided testimony of his own), dated 20 August 2021 but not signed by her. It's my understanding that PR typed up such statements following a phone call with its clients, and that the statements were intended to be a narrative summary of what was said.

The Lender says Miss W's statement contains numerous inaccuracies. Having considered the statement myself, I think it does contain some significant factual errors which cast doubt over the reliability of Miss W's recollections many years after the events in question. Most

critically, Miss W's recollection of her purchase history from the Supplier appears to be substantially incorrect.

Miss W recalled making purchases of a "Silver Week" from the Supplier in 2009, and a "Gold Week" in 2012, before then purchasing the Fractional Club membership in 2015. However, the Supplier's records indicate Miss W made no purchases from the Supplier in 2009 or 2012, and her first purchase of a product from the Supplier was in 2013 (of a different version of the Fractional Club membership, which didn't confer rights to stay in a specific apartment), before going on to make the purchase this complaint is about in October 2015. The Supplier also says it has never sold a product called Silver Weeks or Gold Weeks. Based on my research into the Supplier's products, this appears to be right.

Miss W indicated the purchase in 2015 was when the Supplier had introduced the concept of fractional timeshares to her and marketed it as an investment. However, this can't be correct given she had already purchased a fractional timeshare from the Supplier in 2013. So a crucial difficulty with Miss W's testimony is that she appears to be conflating the details of different purchases, or possibly had the 2013 purchase in mind when describing the 2015 purchase to PR.

While it's normal for memories to fade over time and I don't suggest Miss W's errors in recollection are her fault, this all limits significantly the weight I can place on her testimony relating to the purchase this complaint is about.

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

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

And in light of what the courts had to say in *Carney* and *Kerrigan,* it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr B and Miss W and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

Miss W suggests in her witness statement that she made the purchase because she had wanted to get out of the sales presentation and "make some money". But there's very little weight I can attach to Miss W's recollections for the reasons I've already explained – given the number and fundamental nature of the factual errors in her testimony, and her likely conflation of different purchases – I don't think I can safely arrive at a conclusion that she was motivated to make her purchase in October 2015 by the prospect of making a financial gain, 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.

And for that reason, I do not think the credit relationship between Mr B and Miss W and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

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

It is clear from the submissions of everyone involved in this complaint that there was a lot of information passed between the Supplier and Mr B and Miss W when they purchased membership of the Fractional Club at the Time of Sale. But PR says that the Supplier failed to provide them with all of the information they needed about the ongoing costs of

membership to make an informed decision, breaching Regulation 12 of the Timeshare Regulations.

PR also says that the contractual terms governing the ongoing costs of Fractional Club membership and the consequences of not meeting those costs were unfair contract terms under the CRA.

One of the main aims of the Timeshare Regulations and the CRA was to enable consumers to understand the financial implications of their purchase so that they were/are put in the position to make an informed decision. And if a supplier's disclosure and/or the terms of a contract did not recognise and reflect that aim, and the consumer ultimately lost out or almost certainly stands to lose out from having entered into a contract whose financial implications they didn't fully understand at the time of contracting, that may lead to the Timeshare Regulations and the CRA being breached, and, potentially the credit agreement being found to be unfair under Section 140A of the CCA.

However, as I've said before, the Supreme Court made it clear in *Plevin* that it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A of the CCA. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I've considered firstly the information provided by the Supplier relating to the annual management fees to be paid in respect of the membership. Regulation 12 of the Timeshare Regulations required the Supplier to provide this information in a way that was *"clear, comprehensible and accurate, and sufficient to enable the consumer to make an informed decision about whether or not to enter the contract".*

The specific information the Supplier was required to provide is outlined in schedule 1, part 3 of the Timeshare Regulations. The relevant section states the required information is:

"an accurate and appropriate description of all costs associated with the timeshare contract; how these costs will be allocated to the consumer and how and when such costs may be increased; the method for the calculation of the amount of charges relating to occupation of the property, the mandatory statutory charges (for example, taxes and fees) and the administrative overheads (for example, management, maintenance and repairs)."

The documents the Supplier provided to Mr B and Miss W and which were signed at the Time of Sale on 27 October 2015 set out some information about the ongoing costs that would be associated with the contracts. Broadly speaking, this information included the fact that there would be ongoing management charges to pay and what these charges would be for the first year of membership. There was also an indication that the charges would increase over time, but there was not much information about how the charges would be calculated, or what exactly they covered. Mr B and Miss W were directed to other, rather lengthy, documents to find out more, but the Supplier didn't say where in these documents the relevant information could be found. In these other documents there were details of additional costs which were not mentioned in the documents signed at the Time of Sale.

It follows that it's possible the Supplier didn't meet the requirements of regulation 12 of the Timeshare Regulations to provide, in the prescribed way, an accurate and appropriate description of *all* costs. And while I've not analysed in detail the position regarding whether any of the terms relating to the management charges were *unfair* under the CRA, I think it's possible that some of the terms had the potential to operate in an unfair way, taking into account the lack of transparency and the level of discretion given to the Supplier as to the setting of various charges.

But given the facts and circumstances of this complaint, I am not persuaded that the Supplier's alleged breaches of regulation 12 of the Timeshare Regulations and the CRA in

relation to the costs of membership, are likely to have prejudiced Mr B and Miss W's purchasing decision at the Time of Sale and rendered their credit relationship with the Lender unfair to them for the purposes of section 140A of the CCA. And that's because Mr B and Miss W haven't provided any information or evidence which would lead me to believe that any potential breaches of regulation 12 of the Timeshare Regulations by the Supplier, or the inclusion of unfair terms in the Purchase Agreement, has led to any significant harm or unfairness to them arising *in practice*, either up to this point or in the future.

Moreover, as I haven't seen anything else to suggest that there are any other reasons why the credit relationship between the Lender and Mr B and Miss W was unfair to them because of an information failing by the Supplier, I'm not persuaded it was.

Alleged commission payment by the Lender to the Supplier

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

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33* ('*Hopcraft, Johnson and Wrench*').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

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

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

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

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

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

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

Based on what I've seen, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr B and Miss W but as the supplier of contractual rights they obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreement and thus a fiduciary duty.

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

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, no payment between the Lender and the Supplier, such as a commission, was payable when the Credit Agreement was arranged at the Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not currently persuaded that the commercial arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr B and Miss W.

Section 140A: Conclusion

In conclusion, therefore, given all of the facts and circumstances of this complaint, I don't think the credit relationship between the Lender and Mr B and Miss W was unfair to them for the purposes of Section 140A. And taking everything into account, I think it's fair and reasonable to reject this aspect of the complaint on that basis.

Conclusion

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

If there is any further information on this complaint that Mr B and Miss W wish to provide, I would invite them to do so in response to this provisional decision.

My provisional decision

For the reasons explained above, I'm not minded to uphold this complaint.

Will Culley
Ombudsman