

The complaint

Mr D's and Mrs K'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 him 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 D and Mrs K were members of a timeshare provider (the 'Supplier') having purchased a trial membership from it. 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 27 May 2019 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1300 fractional points at a cost of £16,214 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr D and Mrs K 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 D and Mrs K paid for their Fractional Club membership by taking finance of £20,421 from the Lender (the 'Credit Agreement') – which included the cost of their membership and repayment of the outstanding amount of the loan they took out for their previous trial membership.

Mr D and Mrs K – using a professional representative (the 'PR') – wrote to the Lender on 22 January 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr D's and Mrs K's concerns as a complaint and issued its final response letter on 18 March 2022, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits. Mr D and Mrs K disagreed with the Investigator's assessment and asked for an Ombudsman's decision and it was passed to me.

I issued a provisional decision ('PD') on 8 January 2026 explaining why I didn't think the complaint should be upheld the findings from which are set out below.

"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 currently think this complaint should be upheld.

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

referred to, something that either party has said, that does not mean I have not considered it.

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

The CCA introduced a regime of connected lender liability under section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

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

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr D and Mrs K 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 isn't 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's possible that Fractional Club membership was misrepresented at the Time of Sale for one or both of those reasons, I don't think it's probable. They're 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 isn't any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for these reasons, I don't think it was.

Mr D and Mrs K raised some further allegations of misrepresentation on the part of the Supplier in response to the Investigator's opinion. They suggested that they had been misled as to holidays through Fractional Club membership being cheaper than on the open market and as to being able to secure the quality and size of accommodation they wanted as a family of six, including at school holidays - the sales notes from the Supplier record that there was some discussion about 'needing school holidays time to time' so this was obviously discussed.

But even if there was some discussion about holidays being cheaper through membership and about them being able to book the type of accommodation they wanted including at

school holidays, I don't think it is probable that what was said is likely to have amounted to an actionable misrepresentation.

So, while I recognise that Mr D and Mrs K and the PR have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

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

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

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

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

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

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

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

The PR says, for instance, that the right checks weren't carried out before the Lender lent to Mr D and Mrs K. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr D and Mrs K 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 D and Mrs K. In making that finding I have taken into account information Mr D and Mrs K provided about their finances in a separate complaint made by Mr D about a subsequent timeshare purchase, which complaint I have already considered.

The PR has also said that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the

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

The PR also says that there was one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Mr D and Mrs K in practice, nor that any such terms led them to behave in a certain way to their detriment, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

Overall, therefore, I don't think that Mr D's and Mrs K's credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons set out above and referred to in the Letter of Complaint. But there is another reason, perhaps the main reason, why the PR says the credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to them as an investment in breach of the prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Mr D's and Mrs K'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 D and Mrs K 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 D and Mrs K 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 D and Mrs K 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 D and Mrs K, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr D and Mrs K as an investment in breach of Regulation 14(3) as they have alleged.

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

Was the credit relationship between the Lender and the Consumer rendered unfair?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between MR D and Mrs K 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 D and Mrs K 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.

Their evidence about the Supplier leading them to believe that Fractional Club membership offered them the prospect of a financial gain, was only provided after the Investigator issued their view, and after the judgment in 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'). And as experience tells me that, the more time that passes between a complaint and the event complained about, the more risk there is of recollections being vague, inaccurate and/or influenced by discussion with others, I find it

difficult to understand why the Financial Ombudsman Service was only given such evidence when it was.

Indeed, as there isn't any other evidence on file to corroborate Mr D's and Mrs K's recent evidence about their motivations at the Time of Sale, there is a very real risk their recollections were coloured by the judgment in Shawbrook & BPF v FOS. And, with that being the case, I'm not persuaded that I can give their written recollections the weight necessary to finding that the credit relationship in question was unfair for reasons related to breach of Regulations 14(3) of the Timeshare Regulations.

Furthermore Mr D's and Mrs K's testimony that one of the reasons they went ahead with the purchase of Fractional Club membership was because of the financial return they could get at the end of the agreement isn't credible in my view. I say this because only seven months later, in December 2019, they swapped their fractional points and purchased additional points in another timeshare product the Supplier provided – Vacation Club – which wasn't asset backed and provided no prospect of a return when it ended. In my view this supports a conclusion that what motivated Mr D and Mrs K to purchase Fractional Club membership were the holidays they could take and not because of some gain or profit they might make. I can see no other reason they would have purchased Vacation Club points in place of their fractional points only a few months later.

As Mr D and Mrs K 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 D's and Mrs K'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 D and Mrs K and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

The irresponsible lending complaint

In the Letter of Complaint the PR argued that because Mr D and Mrs K didn't recall any affordability assessment being carried out this amounted to irresponsible lending but no further information was provided to support that complaint.

However, Mr D in a separate complaint about a subsequent loan argued this was unaffordable and that on that basis the loan the subject of this complaint was also unaffordable. He provided information and evidence about his income and outgoings in that complaint which I have considered.

We have set out our approach to considering unaffordable and irresponsible lending complaints on our website – including the key relevant rules, guidance, good industry practice and law. And I have considered our approach when deciding Mr D's and Mrs K complaint.

The Lender needed to take reasonable steps to ensure that it didn't lend to Mr D and Mrs K irresponsibly. It should have completed reasonable and proportionate checks to satisfy itself that they would be able to repay the loan in a sustainable way. There is no set list of what reasonable and proportionate checks should look like, rather greater thoroughness might be

reasonably expected where a person on a lower level of income may be borrowing a high sum or taking out borrowing over a longer period which could potentially cost more in the longer term.

In its final response letter the Lender that the checks it carried out were appropriate for the type and amount of credit provided and carried out to the 'required standard'. But it hasn't provided any details of the checks that it did and as such I am unable to say that these were reasonable and proportionate.

However, even if it had carried out reasonable and proportionate checks, based on the evidence that Mr D and Mrs K provided in the other complaint about their income and outgoings I think the Lender, more likely than not, would have been satisfied that they could repay the loan in a sustainable way. In the circumstances I am not persuaded that the lending was irresponsible.

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

In response to the Investigator's opinion the PR has raised a new argument that wasn't raised before. 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 D and Mrs K in arguing that their credit relationship with the Lender was unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr D and Mrs K, 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 D and Mrs K into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But as I've said before, 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. And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I don't currently think any such failure is itself a reason to find the credit relationship in question unfair to Mr D and Mrs K.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mr D and Mrs K entered into wasn't high. It was only 5% of the amount borrowed and even less than that as a proportion of the charge for credit. So, had they known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time.

After all, Mr D and Mrs K wanted Fractional Club membership and had no obvious means of their own to pay for it. And at such a low level, the impact of commission on the cost of the credit they needed for a timeshare they wanted doesn't strike me as disproportionate. So, I think they would still have taken out the loan to fund their purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr D and Mrs K but as the supplier of contractual rights they obtained under the Purchase Agreement, the transaction doesn't strike me as one with

features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreement and thus a fiduciary duty.

Overall, therefore, I'm not currently persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr D and Mrs K.

S140A conclusion

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

Commission: The Alternative Grounds of Complaint

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

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

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr D and Mrs K a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to them. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think Mr D and Mrs K would still have taken out the loan to fund their purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

I concluded that the Lender hadn't acted unfairly when dealing with Mr D's and Mrs K's Section 75 claims or been party to a credit relationship that was unfair to them.

I gave both parties the opportunity of responding and providing any further information they wanted me to consider before making my final decision. The Lender said it had no further comments but the PR responded and didn't agree with my PD. They provided some further comments and evidence they wish to be considered, including a further statement from Mr D and Mrs K.

Having received the relevant responses from both parties, I'm now finalising my decision.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii)

regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

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

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

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

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

The FCA's Principles

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

- Principle 6
- Principle 7
- Principle 8

What I've decided – and why

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

Following the responses from both parties, I've considered the case afresh and having done so, I've reached the same decision as that set out in my provisional findings which, for the avoidance of doubt, form part of the findings in this final decision unless I state to the contrary.

I note what Mr D and Mrs K say about the time it has taken for their complaint to be dealt with by our service and the stress this has caused. But whilst I acknowledge the time it has taken for a decision to be issued in their complaint, this isn't something that can have a bearing on my findings.

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

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

The PR's further comments in response to the PD in the main relate to the issue of whether the credit relationship between Mr D and Mrs K and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to them

as an investment at the Time of Sale – although the PR does briefly refer to other issues, such as the commission paid by the Lender.

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

The PR explained in their response to my PD that they hadn't shared the Investigator's view on this complaint with Mr D and Mrs K, saying "*this was done in order not to influence their recollections*". The PR also says that it is not possible that that Mr D's and Mrs K's recollections have been influenced by the outcome of *Shawbrook and BPF v FOS* because even if they had been aware of the outcome they wouldn't have been able to understand or apply the complex legal issues involved.

Part of my assessment of the testimony was to consider when it was written, and whether it may have been affected by external factors such as the widespread publication of the outcome of *Shawbrook and BPF v FOS*. I am not persuaded by what the PR has said. It is of note in my view that Mr D and Mrs K uses the word 'investment' nine times within their two page statement. In the circumstances I maintain that there is a risk that their testimony was coloured by the outcome in *Shawbrook & BPF v FOS* and , on balance, I can place little weight on it.

Moreover, as I found in my PD (and despite the multiple references to 'investment') the statement doesn't, in any event, provide credible evidence that Mr D and Mrs K purchased Fractional Club membership because it was an investment. As I said in my PD they transferred fractional points into points in a different timeshare product, 'Vacation Club', only seven months later. This wasn't asset backed and so provided no prospect of a return. I can see no reason they would have transferred points to Vacation Club if they were interested in the gain or profit they might make from their Fractional Club membership.

In making that finding I have considered what Mr and Mrs K have said in their further statement about the transfer of points, referring to the sales pitch being that this was 'a product adjustment'. I have also considered what the PR has said about them not understanding that they had forfeited their investment by transferring their points. However, I am not persuaded Mr D and Mrs K wouldn't have been aware that Vacation Club membership didn't provide them with the prospect of a gain or profit – for example they refer to the 'hard sell' of the benefits of the product so would have known what these were and that they didn't include any prospect of a return.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my PD, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances.

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 D's and Mrs K'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 them and the Lender was unfair to them for this reason.

Mr D and Mrs K have said in their further statement that the Supplier was made fully aware of their financial circumstances and should have led to further checks being made. However,

the information in this complaint and in a separate complaint made by Mr D about a different lender doesn't, in my view, support a conclusion that if the Lender had made reasonable and proportionate checks this would have shown the loan wasn't affordable for them.

The PR has also made some further points about the commission paid by the Lender to the Supplier but has provided no new information or evidence that would lead me to change my findings on this. So, I am still not persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that the credit relationship was rendered unfair to Mr D and Mrs K because of this.

My final decision

I don't uphold this complaint for the reasons set out above.

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

Philip Gibbons
Ombudsman