DRN-6105540

Financial Ombudsman Service

The complaint

Mr P and Mrs R'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 their claim under Section 75 of the CCA.

What happened

Mr P and Mrs R purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 22 January 2014 (the 'First Time of Sale'). They entered into an agreement with the Supplier to trade 16500 non-fractional points for 16500 fractional points at a cost of £11,220 (the 'Purchase Agreement'). They used the Lender to finance this agreement and the credit agreement (in both names) used to fund this purchase was settled on 17 May 2015.

Then on 10 September 2014 (the 'Second Time of Sale') they traded 6500 non-fractional points for 6500 fractional points and purchased a further 1500 fractional points at a cost of £11500 from the same Supplier using credit from the Lender to pay for it (in both names). This credit agreement with the Lender was settled on 21 October 2016.
Fractional Club memberships were asset backed – which meant it gave Mr P and Mrs R more than just holiday rights. It also included a share in the net sale proceeds of properties named on their Purchase Agreements (the 'Allocated Property') after their membership term ends.

Mr P and Mrs R – using a professional representative (the 'PR') – wrote to the Lender (dated 23 December 2022) and said that Mr P and Mrs R had lost out and wished to make a claim under S140 CCA and under S75 of the CCA against the Lender.

There is documentation supplied by the PR dated earlier than December 2022. The Lender has told this service in an email dated 14 September 2022 it was unaware of any complaint or claim for Mr P and Mrs R until this this service contacted it on 12 September 2022.

In January 2024 Mr P and Mrs R's complaint was assessed by an Investigator who, having considered the information on file, decided that Mr P and Mrs R's S140 claims should be upheld. On behalf of their clients the PR accepted the outcome of the Investigator's assessment.
The Lender disagreed with the Investigator's assessment by making arguments about the Limitation Act 1980 and this service's jurisdiction on the matter and asked for an Ombudsman's decision – which is why it was passed to me.

I considered the matter and issued a provisional decision (the 'PD') dated 29 August 2025. In that decision, I said that the complaint about the outcome of the S140A claim regarding the 'First sale' was not within this service's jurisdiction. I've since issued a jurisdiction decision bringing that matter to a conclusion. I said in my PD with regard to the issues within this service's jurisdiction the following (in italics and smaller font for clarity):

The S75 claim (regarding the First Sale)

Within the letter of claim dated 23 December 2022 the PR also made a claim on Mr P and Mrs R's behalf under S75 of the CCA. These include allegations of misrepresentation during the sales process and submissions in support of those allegations. This membership was purchased on 22 January 2014 by Mr P and Mrs R and the Lender in its response to the assessment by our investigator has said:

"we consider this claim and complaint to be time barred under the statute of Limitation Act 1980."
Mr P and Mrs R's PR have said that the timeshare supplier misrepresented the nature of the membership to them when they bought it. However, under section 9 of the Limitation Act 1980, Mr P and Mrs R had to make any misrepresentation claim within six years of when they entered into the Purchase and Credit Agreements – which was in January 2014 – because that is when they say they lost out having relied on false statements of fact. As the claim wasn't made to the Lender until 2022 it is clearly outside that six-year time limit. And so, I think the Lender fairly dealt with Mr P and Mrs R's s75 claim to it regarding misrepresentation.

Similarly I've not seen any evidence of breach of contract claim under S75 being made to the Lender within six years of any breach of contract allegedly taking place. In summary regarding the first sale I currently think that Mr P and Mrs R's complaint regarding their S140 is out of this service's jurisdiction and in relation to their S75 claim complaint I don't think the Lender has to do any more. This is because it is entitled to apply the Limitation Act here and has done so fairly.

The second sale-The S75 claim

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.

This membership was purchased on 10 September 2014 by Mr P and Mrs R but I've seen no persuasive evidence of Mr P and Mrs R or their PR making a claim to the Lender before September 2022 (at the earliest). Mr P and Mrs R have said that the timeshare supplier misrepresented the nature of the membership to then when they bought it and mis-sold it. However, under section 9 of the Limitation Act 1980, Mr P and Mrs R had to make that claim within six years of when they entered into the timeshare and credit agreements – which was in September 2014 – because that is when they say they lost out having relied on false statements of fact.

As the claim wasn't made to the Lender until December 2022 it is clearly outside that six-year time limit. So I don't think Mr P and Mrs R's have lost out due to the Lender not upholding their S75 claim for misrepresentation albeit for different reasons. I've also considered the claim letter in relation to this purchase and I note that I cannot see any claim for breach of contract within that claim that would be in time under the Limitation Act 1980 due to the date of any alleged breach being with six years of the claim being made to the Lender. So I don't think Mr P and Mrs R have lost out due to the Lender's position on S75 for either breach of contract or misrepresentation.

The Section 140A claim re the Second Sale

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the second 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 P and Mrs R 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 second Time of Sale along with any relevant training material;*
2. *The provision of information by the Supplier at the second 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 second 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 P and Mrs R and the Lender.

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

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

The PR says, for instance that:

1. *the right checks weren't carried out before the Lender lent to Mr P and Mrs R; and*
2. *Mr P and Mrs R were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.*

However, as things currently stand, none of these strike me as reasons why this complaint should succeed. I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr P and Mrs R 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 the Mr P and Mrs R.

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

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 P and Mrs R were:

(1) *told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true.*
(2) *told by the Supplier that Fractional Club membership was an "investment" when that was not true.*

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

So, while I recognise that Mr P and Mrs R 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 140A of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier which rendered the relationship unfair. For the reasons I've set out above, I'm not persuaded that there was.

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

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mr P and Mrs R states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday on occasions. I accept that they may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement or rendered the credit relationship unfair.

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

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

A share in the Allocated Property clearly constituted an investment as it offered Mr P and Mrs R 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 P and Mrs R 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 P and Mrs R, 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 P and Mrs R as an investment in breach of Regulation 14(3).

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

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

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr P and Mrs R 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 P and Mrs R and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mr P and Mrs R decided to go ahead with their purchase. I note that in their claim letter dated 9 March 2020 which although not received was clearly drafted there is no persuasive description of how the membership was sold as an investment. And indeed it says the membership isn't an investment when clearly it is an investment.

I've also considered the claim letter dated 23 December 2022 which is similar in that it gives no persuasive description of how the membership was sold but rather just says it was described as an investment when in fact it wasn't (incorrectly). I've also given consideration to the email dated 19 April 2023 which is unsigned but the PR says its Mr P and Mrs R's recollections of the matter. This also gives no persuasive description of what was said in the sale nor persuasive explanation of their motivations for purchasing in this sale. And it should be remembered that in this purchase were an additional 1500 points which significantly improved Mr P and Mrs R's holiday benefits. And I can see that such an increase in holiday benefits from the point of sale would be appealing.
That doesn't mean they weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr P and Mrs R 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 P and Mrs R's decision to purchase Fractional Club membership at the second 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 P and Mrs R and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

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

The PR says that Mr P and Mrs R were not given sufficient information at the Time of Sale by the Supplier in order to make an informed choice.

It isn't clear what information the PR thinks the Supplier failed to provide at the Time of Sale. But as I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

So, while I acknowledge that it is also possible that the Supplier did not give Mr P and Mrs R sufficient information, in good time, in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'), even if that was the case, neither Mr P and Mrs R nor the PR have persuaded me that they were deprived of information that would have led them to make a different purchasing decision at the second Time of Sale. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why they led to a financial loss.

In conclusion, given the facts and circumstances of this complaint, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mr P and Mrs R's Section 75 claims, and I was 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 could see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

Following my provisional decision, I also communicated how I was not persuaded that Mr P and Mrs R's credit relationship with the Lender wasn't unfair to them for reasons relating to the commission arrangements between it and the Supplier. In that I said the following (again in changed font):

Did the commission arrangements render the credit relationship unfair?

My reading of the Supreme Court's judgment in Hopcraft, Johnson and Wrench is that it sets out principles which can apply to credit brokers other than car dealer–credit brokers. So I've taken into account those principles when considering the allegations of undisclosed payments of commission in this complaint.

In Hopcraft, Johnson and Wrench the Supreme Court ruled that, in each of the three cases, 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:

- *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"[1];*
- *The failure to disclose the commission; and*
- *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:

- *The size of the commission as a proportion of the charge for credit;*
- *The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);*
- *The characteristics of the consumer;*
- *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*
- *Compliance with the regulatory rules.*

After careful consideration, I don't think Hopcraft, Johnson and Wrench assists Mr P and Mrs R 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 the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr P and Mrs R. Nor have I seen anything that persuades me that the commission arrangements between them gave the Supplier a choice over the interest rate that led Mr P and Mrs R into a credit agreement that cost disproportionately more than it otherwise could have.

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[1] *Hopcraft, Johnson and Wrench* (para 327).

I recognise that it's possible 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 noted in my provisional decision, case law on section 140A makes clear that regulatory breaches do not automatically lead to an unfair credit relationship, and that such breaches and any consequences must be considered in the round rather than in a narrow or technical way.

With that being the case, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, I'm not minded to think any such failure is itself a reason to find the credit relationship in question unfair to Mr P and Mrs R. I say this for the following reasons.

In stark contrast to the facts in Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging Mr P and Mrs R's Credit Agreement wasn't high. In Mr P and Mrs R's case the commission was £914.25, which was only 7.95% of the amount borrowed and (8.65%) as a proportion of the charge for credit, which is the calculation the Supreme Court used.

Had Mr P and Mrs R known at the Times of Sale that the Supplier was going to be paid a flat rate of commission at this 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 P and Mrs R 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 loans to fund their purchase at the Time of Sale had the amounts 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. As it wasn't acting as an agent of Mr P and Mrs R 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 don't consider it necessary for me to take into account any commission the Supplier might have paid to its sales representatives, or that this should be disclosed or factored into any calculation used to determine unfairness. Even if any such arrangement was in place (and I make no finding in this respect), its disclosure and/or payment would be further removed from any obligations the Supplier might have held, and even less likely to have an impact on Mr P and Mrs R's decision to enter into the Credit Agreement.

Overall, I'm don't intend to conclude 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 P and Mrs R.

So, given all of the factors I've looked at both here and in my provisional decision, and having taken all of them into account, I'm still not persuaded that the credit relationship between Mr P and Mrs R and the Lender under the Credit Agreement and related Purchase Agreement were unfair to them. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

Commission: alternative grounds of complaint

Although the PR's submissions expressed the view that payment of commission made the financial arrangements unfair, I'm conscious that there might be some alternative grounds that could constitute separate and freestanding complaints to Mr P and Mrs R's allegation of an unfair credit relationship.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because the Supplier took a payment of commission from the Lender without telling Mr P and Mrs R (that is, secretly). But given I'm not persuaded the Supplier – when

acting as credit broker – owed Mr P and Mrs R a fiduciary duty, I can't see how I could properly uphold on this ground.

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 it and the Supplier. As I've said, it's possible that the Lender failed to follow the relevant regulatory guidance. But I don't think any such failure on the Lender's part leads to my awarding compensation to Mr P and Mrs R because, for the reasons I also set out above, I think Mr P and Mrs R would still have taken out the loan to fund their purchase at the Time of Sale had the commission arrangements been adequately disclosed at that time.

The Lender did not respond to the PD. The PR also responded – they did not accept the PD and provided some further comments and evidence they wish to be considered.

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:
<u>The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance</u>
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]

<u>The FCA's Principles</u>
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
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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.

The PR's further comments in response to the PD in the main relate to the issue of whether the credit relationship between Mr P and Mrs R and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr P and Mrs R as an investment at the Time of Sale.

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

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

<u>The Supplier's alleged breach of Regulation 14(3) of the Timeshare Regulations</u>

Included in the PR's response to my PD was an oral hearing request along with the offer to produce sworn affidavits. Oral hearings are something that I can direct happen under DISP 3.5.5. However, the Financial Ombudsman Service is set up to decide complaints informally and it is for me, as the decision maker, to determine what evidence I think I need to determine what is a fair and reasonable outcome to a complaint. Having considered everything, I do not think I need to hold an oral hearing to fairly determine this complaint. This is because both parties have already provided lengthy submissions. In this case, I have comments from Mr P and Mrs R, other evidence, including the documents from the sale, and full submissions from PR and Lender to decide what I think was most likely to have happened. I'm satisfied I'm able to weigh up what Mr P and Mrs R have said against the available evidence and arguments to determine what I think happened on the balance of probabilities without the need for an oral hearing. And as it's in everyone's interest to resolve this complaint as soon as possible, to grant a hearing at such a late stage would inevitably prolong the resolution of this case.

I understand that the PR also offers to have Mr P and Mrs R to provide a sworn affidavit. But I must remind them that we don't have strict evidential requirements. We aren't expected to decide complaints only after receiving sworn evidence. And our jurisdiction is investigative rather than adversarial. I remain of the view that the information we have on file is enough to cover all the issues I need to consider to reach a fair decision. And as I've considered everything on file, including the specific points raised by the PR as part of its request, I'm of the view that a hearing request and/or sworn affidavits aren't required.

As I explained in my PD (quoted above), although I found there was a possibility that the Supplier breached Regulation 14(3) at the Time of Sale, I wasn't persuaded that this was a motivating factor in their decision to purchase. So, I wasn't persuaded that the evidence suggested that Mr P and Mrs R purchased Fractional Club membership in whole or in part down to any breach of Regulation 14(3).

Here, the PR has stated that I've been inconsistent with my approach compared to previous decisions issued by the service, and has provided examples it feels demonstrates this. But my decision is based on consideration of Mr P and Mrs R's specific circumstances. Each complaint turns on its own facts; an ombudsman's decision on how one timeshare sale occurred does not determine his, or any other ombudsman's, decisions about the facts of

other sales at different times to different purchases.

The PR has also reiterated that the judgment handed down in *Shawbrook & BPF v FOS* asserted that the relevant question in this circumstance is whether the breach of regulation 14(3) was a material factor in the decision to purchase, not whether it was the only factor or principal one. It feels that the testimony Mr P and Mrs R have provided demonstrates that this was the case. But, as I explained in my provisional decision, I'm not persuaded from the testimony that Mr P and Mrs R have adequately demonstrated that the promise of profit was a motivating factor to their decision to move ahead with the purchase – principal or otherwise.

So, ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr P and Mrs R's purchasing decision.

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 P and Mrs R's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mr P and Mrs R and the Lender was unfair to them for this reason.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr P and Mrs R's Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs R to accept or reject my decision before 23 February 2026.

Rod Glyn-Thomas
Ombudsman