

The complaint

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

What happened

Mr and Mrs O was the member of a timeshare provider (the 'Supplier') – having purchased a trial membership in 2015 (using a loan from a different credit provider). But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – points in which Mr and Mrs O purchased on the dates below:

- 950 fractional points on 18 August 2016 for £16,357 ('Purchase Agreement 1') after trading in their trial membership.
- 1,200 fractional points on 10 August 2017 for £5,149 – having traded in the first lot of 950 fractional points. ('Purchase Agreement 2')

(which, when appropriate, I'll simply refer to as the 'Purchase Agreements')

As this complaint is concerned with the purchases above, those are the 'Time(s) of Sale' for the purposes of my decision.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs O more than just holiday rights. It also included a share in the net sale proceeds of a property named on the relevant purchase agreement (which I'll refer to as the 'Allocated Property 1 and 2' or, when appropriate, the 'Allocated Properties') after their membership term ends.

Mr and Mrs O paid for their fractional points by taking the following amounts of finance of from the Lender:

- £18,812 on 18 August 2016 ('Credit Agreement 1')
- £23,852 on 10 August 2017 ('Credit Agreement 2')

(which, when appropriate, I'll simply refer to as the 'Credit Agreements')

In both instances, the additional amount borrowed was to consolidate the previous loans used to purchase the trial membership and Purchase Agreement 1.

Mr and Mrs O – using a professional representative (the 'PR') – wrote to the Lender on 8 February 2022 (the 'Letter of Complaint') to raise several 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 and Mrs O's concerns as a complaint and issued its final response

letter on 16 September 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 in relation to Credit Agreement 1 and upheld it in relation to Credit Agreement 2.

Mr and Mrs O disagreed with the Investigator's assessment in relation to Credit Agreement 1, and the Lender disagreed in relation to Credit Agreement 2. Both asked for an Ombudsman's decision – which is why it was passed to me.

I issued a provisional decision explaining that I was not planning to uphold the complaint.

The Lender provided no further comments in response to my provisional decision.

The PR disagreed with my provisional findings and provided some comments it wanted me to consider when making my final decision.

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. Having done so, I've reached the same decision as that which I outlined in my provisional findings – and for broadly the same reasons. A copy of my provisional findings is below. As such, I do not uphold this complaint.

START OF COPY OF PROVISIONAL FINDINGS

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

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

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

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs O 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 they owned a 'fraction' of the Allocated Property when that was not true as it was owned by a trustee.
- (3) Told by the Supplier that Fractional Club membership was an "investment" when that was not true.

Neither the PR nor Mr and Mrs O have set out in any detail what words and/or phrases where allegedly used by the Supplier to misrepresent Fractional Club for the reason given in points 1 or 2. However, the PR says that such representations were untrue because the Allocated Property was legally owned by a trustee and there was no indication of what duty of care it had to actively market and sell the property. Further, there is no guarantee that any sale will result at all, leaving prospective members to pay their annual management charge for an indefinite and unspecified period.

However, I cannot see why the phrases in points 1 or 2 above would have been untrue at the Time of Sale even if it was said. It seems to me to reflect the main thrust of the contracts Mr and Mrs O entered into. And while, under the relevant Fractional Club Rules, the sale of the Allocated Property could be postponed for up to two years by the 'Vendor'¹, longer than that if there were problems selling and the 'Owners'² agreed, or for an otherwise specified period provided there was unanimous agreement in writing from the Owners, that does not render the representation above untrue. So, I am not persuaded that the representation above constituted a false statement of fact even if it was made.

As for point 3, it does not strike me as a misrepresentation even if such a representation 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 – nor was it untrue to tell prospective members that they would receive some money when the allocated property is sold. After all, a share in an allocated property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give prospective members that interest, it did not change the fact that they acquired such an interest.

The PR has raised other matters as potential misrepresentations, but it seems to me that they are not allegations of the Supplier saying something that was untrue. Rather, it is that Mr and Mrs O weren't told things about the way the membership worked, for example, that the obligation to pay management fees could be passed on to their children. It seems to me that these are allegations that Mr and Mrs O weren't given all the information they needed at the Time of Sale, and I will deal with this further below.

So, while I recognise that Mr and Mrs O 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 Section 75 claim.

Section 75 of the CCA: the Supplier's Breach of Contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mr and Mrs O 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 Agreements.

¹ Defined in the FPOC Rules as "CLC Resort Developments Limited".

² Defined in the FPOC Rules as "a purchaser who has entered into a Purchase Agreement and has been issued with a Fractional Rights Certificate (which shall include the Vendor for such period of time until the maximum number of Fractional Rights have been acquired)."

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mr and Mrs O 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 occasion. 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 Agreements.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr and Mrs O any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

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

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Times of Sale. But there are other aspects of the sales processes 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 relationships between Mr and Mrs O and the Lender along with all of the circumstances of the complaint, I don't think the credit relationships between them were likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

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

I have then considered the impact of these on the fairness of the relevant credit relationships between Mr and Mrs O and the Lender.

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

Mr and Mrs O's complaint about the Lender being party to unfair credit relationships was and is made for several reasons.

The PR says, for instance, that:

1. Mr and Mrs O were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.
2. The right checks weren't carried out before the Lender lent to Mr and Mrs O.
3. The loan interest was excessive.
4. The Credit Agreements did not show the amount used to consolidate the previous loan separately to the price of the relevant Purchase Agreement.
5. Mr and Mrs O were not given a choice of lender by the Supplier.³

However, none of this strikes me as reason to uphold this complaint.

I acknowledge that Mr and Mrs O 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 presentations that made them feel as if they had no choice but to purchase Fractional Club memberships when they simply did not want to. They were also given 14-day cooling off periods and they have not provided a credible explanation for why they did not cancel their memberships during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs O made the decision to purchase Fractional Club memberships because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs O was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationships 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 and Mrs O.

The PR suggests that the fact that the loan was used to refinance an earlier one wasn't set out in the Credit Agreements means the Lender wasn't permitted to enforce the Credit Agreements. However, it looks to me like Mr and Mrs O knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from, that they were refinancing an earlier loan and that they were borrowing money to pay for Fractional Club membership (this was set out clearly on a pricing sheet provided to them at the Times of Sale). And as the lending doesn't look like it was unaffordable for them, even if the Credit Agreements didn't contain all the information they needed to (which I make no formal finding on), I can't see why that led Mr and Mrs O to experience a financial loss – such that I can say that the credit relationships in question were unfair to 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 loans weren't arranged properly.

Similarly, the PR has not explained how, if it were true, Mr and Mrs O not being offered a different lender to pay for Fractional Club membership caused them any unfairness or financial loss. Mr and Mrs O were aware of the interest rates as set out on the face of the Credit Agreements, as well as the terms of the loans and the monthly repayments, so they understood what it was they were agreeing to. Further, I don't think the rate of interest was

³ The PR also raised concerns about undisclosed commission, but it has now accepted our approach to this – and that in this case (where the maximum commission paid was 5% of the amount borrowed) the commission arrangements between the Lender and Supplier did not lead to unfairness or otherwise justify this complaint being upheld.

excessive, compared either to other rates available from other point-of-sale lenders or on the open market, so I can't say it would be fair or reasonable to tell the Lender to do anything because of this.

Overall, therefore, I don't think that Mr and Mrs O credit relationships with the Lender were 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 relationships with the Lender were 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

The Lender does not dispute, and I am satisfied, that Mr and Mrs O'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 Times of Sale.

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.

Shares in the Allocated Properties clearly constituted investments as they offered Mr and Mrs O the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs O 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 Times of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs O, the financial value of their share in the net sales proceeds of the Allocated Properties 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 and Mrs O 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 Mr and Mrs O rendered unfair?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Times of Sale, I now need to consider what impact such breaches had on the fairness of the credit relationships between Mr and Mrs O and the Lender under the Credit Agreements and related Purchase Agreements 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 credit relationships between Mr and Mrs O and the Lender that were 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 Agreements and the Credit Agreements 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 and Mrs O decided to go ahead with their purchases. I say this for the following reasons.

The PR has provided a copy of a webform submission from Mr and Mrs O dated 27 March 2020, in which they wrote to a Timeshare Advice Company:

"I can't sell this no one will buy. I was supposed to get my money back at the end but I think they scammed me. Can't even book holidays I want."

This suggests Mr and Mrs O were unhappy with the holidays available using Fractional Club membership and had tried to sell it without success. And that they had expected to get their money back at the end – but did not feel they would. This is not compelling evidence that they held out the hope or expectation of making a profit from the purchases nor that this was material to their decisions to buy. Indeed, it does not describe what happened at the Times of Sale and seems to be only a summary of their concerns at that time, which had prompted them to reach out to the Timeshare Advice Company.

The PR provided a questionnaire completed by the Timeshare Advice Company dated 3 December 2021. I do not know why this was completed one year and nine months after Mr and Mrs O first contacted the Timeshare Advice Company. It noted:

"Thought would be good for children"

*rep told could get the holidays saving money & getting it all back + a profit @ end
Then was told to upgrade for better accommodation + better profit
Can't get holidays - stuck with paying 255 pm
Can't see that this investment will pay off
Doubt will get any money back"*

This again speaks of Mr and Mrs O getting their money back at the end but adds that they expected a profit as well – at both Times of Sale. However, I am mindful that this was not completed by Mr and Mrs O themselves, and I cannot be sure it accurately reflects what they said.

The PR provided a call note dated 6 December 2021, which it said was taken when Mr and Mrs O first contacted it (after being referred to it by the Timeshare Advice Company). This said:

*"2016 hol - Spain - Costa del Sol - school hols...
Presentation - get people on board or come on hols -> get money to reduce
maintenance fees.
Fractional sold to them to buy a piece of property to be sold at set time - get money
back/profit - kind of investment
2017 Shawbrook loan - ?CLC Purchase Ag?
Upgrade - fractional - in Tenerife
Mandatory presentation - new updated fractional
Better accom, availability + increased profit on sale
Only had 2 hols - no availability
maintenance fees paid
fraction - pay for portion of apt for period time
we own then sell back + get [up arrow]£
Now nothing to show just large loan"*

About the 2016 sale, this refers to getting money back or a profit and describes Fractional Membership as *"kind of an investment"*. About 2017, it says upgrading would provide better accommodation, availability and increased profit. Again, this was not written by Mr and Mrs O directly, so may not accurately reflect their recollections.

For example, I have seen some cases where what is shown on the Timeshare Advice Company questionnaire and the PR's call note does not match what a customer has said in their own statement (that is, the questionnaire and call note refers to them hoping or expecting a profit, but the customer's statement does not say that).

The PR also provided a statement from Mr and Mrs O, which it said it took in December 2021. This presumably is Mr and Mrs O's recollections in their own words – so seems to me to be the most reliable of the documents I have highlighted in this section. The statement said:

"In 2015 a friend of ours already had a Timeshare with CLC and told us that we should look into it. As our children were 11 & 17 at the time it sounded quite appealing. I was a nurse and [Mr O] was a Warehouse / Factory worker.

We went to a presentation in Birmingham and eventually ended up buying a Trial Membership. The CLC rep arranged a loan of £3000.00 with [other credit provider].

*[The Supplier] booked our first holiday to Spain, Costa del Sol in the school holidays (August) for 2016. We had to attend a Presentation which went on for quite some time where they talked about the benefits of upgrading to a fractional, they said that if we got other people onboard or come on holiday then we would get some money that would reduce the maintenance fees. **We would buy a piece of property that would get sold at a set time and that we would get our money back. It was sort of an investment.***

Eventually we agreed to sign up for a Fractional and they arranged a loan with Shawbrook which also consolidated the [other credit provider] loan.

*In 2017 we went on holiday to Tenerife. We attended another mandatory presentation. One of the things we mentioned was that although we had booked in the summer holidays there was little choice. The reps told us about the latest updated Fractional and **told us that we should upgrade to ensure that we would get better accommodation, availability and a better profit when it was sold.***

We only had 2 holidays after that we could never book the school holidays.

We carried on paying the maintenance fees until recent years and are now left with a very large loan with nothing to show for it. We are still paying £275.62 a month."

(my emphasis)

So, Mr and Mrs O themselves say that in 2016 their understanding was that the purchase would lead to them getting their money back on the sale of the Allocated Property. While they describe this as a "kind of investment", it is not clear that this means they hoped or expected to make a profit. Their description of what they expected to get back did not speak of making a profit – only getting their money back.

That being the case, it is difficult for me to conclude from the statement that any breach of Regulation 14(3) at the time of sale in 2016 was material to Mr and Mrs O's decision to purchase. Clearly, they were buying Fractional Points to use to purchase holidays each year (which they did not previously own). But what they say here does not in itself persuade me they hoped or expected to make a profit from the purchase. If that was important to them and influenced their decision to purchase – I would expect this to be made clear in their statement.

About the 2017 purchase, Mr and Mrs O indicate they had been dissatisfied with the availability of suitable holidays and had raised this concern. It seems from what they've said here that upgrading (effectively buying more Fractional Points) would help resolve that issue. That comes across as a strong motivation for the purchase. They mention getting better accommodation and "a better profit" as well. But making a "better profit" seems odd given they had not mentioned hoping or expecting a profit from the 2016 purchase.

This seems finely balanced to me. On the one hand Mr and Mrs O mention making a profit on the 2017 purchase, and the questionnaire and call note also mention making a profit from that purchase as well as the 2016 one. But given that Mr and Mrs O do not mention making a profit on the 2016 purchase – only getting their money back (including on the webform), I feel it is difficult for me to conclude that it was Mr and Mrs O who have made a mistake on their own statement – rather than the Timeshare Advice Company and PR noting down something that did not match their recollections. For example, the questionnaire seems to introduce the idea of the timeshare being a financial investment that could increase in value – by using closed (yes/no) questions about this.

Added to this is the fact that all the evidence I have mentioned here was provided late in the complaint process – the statement on 20 December 2023, the call notes on 6 May 2025, the questionnaire and webform on 9 May 2025. That was all after the ombudsman’s approach to complaints like this had been made clear including being challenged by Judicial Review – of which the PR was well aware.

I also note that the Letter of Complaint and other letters from the PR in relation to this complaint refer to Mr and Mrs O expecting to “*recoup some of their total investment*” and that Fractional Club membership was “*a low cost investment which provides flexible holidays as well as their money back at the end of the investment period*”. While this uses the word investment the descriptions of what that might lead to do not suggest more than Mr and Mrs O getting their money back. And that does not seem to me to speak of them hoping or expecting to make a profit.

Overall, I do not think the evidence provided is sufficiently consistent, plausible and (most importantly) persuasive for me to conclude that Mr and Mrs O entered the Purchase Agreements because (at least in part) they hoped or expected to make a profit.

That doesn’t mean they weren’t interested in a share in the Allocated Properties. After all, that wouldn’t be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs O themselves don’t persuade me that their purchases were motivated by their shares in the Allocated Properties and the possibility of a profit, I don’t think breaches of Regulation 14(3) by the Supplier were likely to have been material to the decisions Mr and Mrs O ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs O’s decisions to purchase Fractional Club membership at the Times of Sale were 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 purchases whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationships between Mr and Mrs O and the Lender were unfair to them even if the Supplier had breached Regulation 14(3).

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

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

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.

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

As for the PR's argument that Mr and Mrs O's heirs would inherit the on-going management charges, I fail to see how that could be the case or that it could have led to an unfairness that warrants a remedy.

END OF COPY OF PROVISIONAL FINDINGS

The PR's response to my provisional findings about an unfair relationship

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 provisional decision only relate to the issue of whether the credit relationship between Mr and Mrs O and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr and Mrs O as an investment at the Time of Sale.

As outlined in my provisional decision, 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 provisional decision. 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 provisional decision. So, I'll focus here on the PR's points raised in response.

The PR has provided further comments and evidence which in my view relate to whether Fractional Club membership was marketed or sold as an investment in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. However, as I explained in my provisional decision, while the Supplier's sales processes left open the possibility that the sales representative may have positioned Fractional Club membership as an investment, it isn't necessary to make a finding on this as it is not determinative of the outcome of the complaint. I explained that Regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

The PR's comments and evidence in this respect do not persuade me that I should uphold Mr and Mrs O's complaint, because they do not make me think it's any more likely that the Supplier's breach of Regulation 14(3) led Mr and Mrs O to enter into the Purchase Agreement and the Credit Agreement.

The PR has provided its further thoughts as to Mr and Mrs O's likely motivations for purchasing Fractional Club membership. I recognise it has interpreted Mr and Mrs O's evidence differently to how I have and thinks it points to them having been motivated by the prospect of a financial gain from Fractional Club membership.

In my provisional decision, I explained the reasons why I didn't think Mr and Mrs O's purchase was motivated by the prospect of a financial gain (i.e., a profit). And although I have carefully considered the PR's arguments in response to this, I'm not persuaded the conclusions I reached on this point were unfair or unreasonable.

The PR has highlighted part of 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 and BPF v FOS*') suggesting from this that the term investment extends beyond profit or financial gain to the prospect of money back. I have taken *Shawbrook and BPF v FOS* into account when making my decision and I don't think that is what the judge intended in the paragraph the PR has highlighted. I explained in my provisional decision that the definition of investment I used was that agreed by the parties in *Shawbrook & BPF v FOS* and I see no reason to view this differently.

So, ultimately, for the above reasons, along with those I already explained in my provisional decision, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr and Mrs O's purchasing decision. And for that reason, I do not think the credit relationship between Mr and Mrs O and the Lender was unfair to Mr and Mrs O even if the Supplier had breached Regulation 14(3).

Conclusion

In conclusion, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with Mr and Mrs O under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate Mr and Mrs O.

My final decision

For the reasons I've explained, I've decided not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O and Mr O to accept or reject my decision before 3 March 2026.

Phillip Lai-Fang
Ombudsman