

## **The complaint**

Mr and Mrs J's complaint is, in essence, that First Holiday Finance Ltd (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 J were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 23 May 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,716 fractional points at a cost of £6,106 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs J more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr and Mrs J paid for their Fractional Club membership by paying a deposit of £1,000 and taking finance for the remaining £5,106 from the Lender (the 'Credit Agreement').

Mr and Mrs J – using a professional representative (the 'PR') – wrote to the Lender on 13 September 2022 (the 'Letter of Complaint') to raise a number of different concerns. Since then the PR has raised some further matters it says are relevant to this outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr and Mrs J's concerns as a complaint and issued its final response letter on 5 October 2022, rejecting it on every ground.

Mr and Mrs J then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

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

The Lender disagreed with the Investigator's assessment 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'). In that decision, I said:

### ***'The legal and regulatory context***

*In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.*

*The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here.*

### **What I've provisionally decided – and why**

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

*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**

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*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, I don't think Mr and Mrs J would have been able to make a successful claim under Section 75.*

*At the time Mr and Mrs J notified the Lender of their claim, on 13 September 2022, I think it would have been time-barred under the Limitation Act 1980 ("LA").*

*The LA sets out limitation periods (time limits) for bringing various types of legal claim. If a claim is brought too late, the respondent is likely to have a complete defence to the claim on that basis. For claims relating to misrepresentation, the limit normally runs six years from the date a person suffers damage as a result of the misrepresentation – such as entering into a contract and incurring liabilities they wouldn't have otherwise.*

*This means the time to bring a claim for misrepresentation would have been six years from the Time of Sale, so the limitation period for such a claim would have expired on 23 May 2019, more than three years before Mr and Mrs J complained. However, case law suggests that, even if a limitation period has expired for a standalone misrepresentation claim, relevant misrepresentations that could be attributed to the Lender can be considered as part of the assessment of the unfairness of the credit relationship. So, I have gone on to consider those matters below.*

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

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*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 J say that they could not holiday where and when they wanted to. That was framed, in the Letter of Complaint, as an alleged misrepresentation. However, on my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.*

*Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mr and Mrs J states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday on a number of occasions. 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.*

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

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

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

*Having considered the entirety of the credit relationship between Mr and Mrs J 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*
- 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 and Mrs J and the Lender.*

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

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

*They include, allegations that:*

1. *Mr and Mrs J 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 J.*
3. *the loan interest was excessive.*
4. *Mr and Mrs J were not given a choice of lender by the Supplier.*

*However, as things currently stand, none of these strike me as reasons why this complaint should succeed.*

*I acknowledge that Mr and Mrs J may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs J made the decision to purchase Fractional Club membership 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 J 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. I realise that, unfortunately, Mr and Mrs J started to struggle financially and eventually fell behind on their loan payments. But that was some time after the Time of Sale and, from the information provided, I am not satisfied that the lending was unaffordable for Mr and Mrs J at the relevant time.*

*The PR has not explained how, if it were true, Mr and Mrs J not being offered a different lender to pay for Fractional Club membership caused them any unfairness or financial loss. Mr and Mrs J were aware of the interest rate set out on the face of the Credit Agreement, as well as the term of the loan and the monthly repayments, so they understood what it was they were taking out. Further, I don't think the rate of interest was 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 J's credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR now says the credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to 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 J'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 and Mrs J 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 and Mrs J 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.<sup>1</sup>*

*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 J 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 and Mrs J, 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 and Mrs J 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.*

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<sup>1</sup> The PR has argued that Fractional Club membership amounted to an Unregulated Collective Investment Scheme, however this was considered and rejected in 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).

### **Was the credit relationship between the Lender and Mr and Mrs J 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 and Mrs J and the Lender under the Credit Agreement and related Purchase Agreement as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.*

*Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs J 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 and Mrs J decided to go ahead with their purchase. I say that having considered the available testimony in the form of a typed statement, which is unsigned and undated and appears to be from Mr and Mrs J. The statement was provided to this service in January 2024, with the PR claiming it dated back to June 2022. The statement includes the following:*

*'In 2013 we had a [holiday via the Supplier] as we now had our son... who was 2 at the time. As usual we had to attend a presentation. The reason that we ended up buying Fractional was that the sales rep told us that the Points timeshare was in perpetuity and that when we died our kids would inherit the maintenance charges.*

*They also said it was a good opportunity for our children as the Fractional we could sell in 19 years and have a massive lump sum to put our kids through university or help buy a home.*

*It was a big chunk of money that we could cash it in for our son's future.'*

*While the suggestion from the PR is that Mr and Mrs J agreed to purchase Fractional Club membership as an investment, I don't consider that the evidence above indicates that they did so for financial gain or profit. Rather Mr and Mrs J indicated that they went ahead more because they wanted to lessen the term of their existing timeshare.*

*Mr and Mrs J refer to getting some money back, although I'm not persuaded that the statement suggests they anticipated making a profit as the PR now argues.*

*In May 2025 the PR provided copy handwritten notes, dated 7 June 2022, purportedly made during or following a call with Mrs J. The call notes are largely consistent with what was included in Mr and Mrs J's undated statement. Which means, again, that it included little suggestion that Mr and Mrs J went ahead with the purchase expecting or hoping to make a profit on their outlay.*

*That doesn't mean Mr and Mrs J 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 and Mrs J themselves don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.*

*On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs J'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 and Mrs J 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 and Mrs J were not given sufficient information at the Time of Sale by the Supplier about membership, including about the ongoing costs of Fractional Club membership and the fact that Mr and Mrs J's heirs could inherit these costs.*

*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 J sufficient information, in good time, on the various charges they could have been subject to as a Fractional Club member 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 J 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 facts and circumstances.*

*As for the PR's argument that Mr and Mrs J'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.*

*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 and Mrs J in arguing that their credit relationship with the Lender was unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

Based on what I've seen 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 and Mrs J 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 recognise that the Lender was and is part of the same group of companies as the Supplier. And I acknowledge that tie may not have been adequately disclosed at the Time of Sale. But I can't currently see why that renders the credit relationship between Mr and Mrs J and the Lender unfair to them – such that I should uphold the complaint. I say that because the Lender has explained that the Supplier would share finance proposals among its approved external finance partners; the Supplier couldn't write all its finance business "in-house" [through the Lender]; and the Lender largely provided loans to customers whose circumstances fell outside of its external finance partners' lending terms. So, I'm not persuaded that Mr and Mrs J were led into a credit agreement with the Lender because it was tied in some way to the Supplier.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, the Lender didn't pay the Supplier any commission at the Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not currently persuaded that the 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 and Mrs J.*

### **Section 140A: 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 and Mrs J and the Lender under the Credit Agreement and related Purchase Agreement was 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.*

### **Conclusion**

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

The Lender confirmed its acceptance of the PD and that it had nothing further to add.

The PR also responded – it did not accept the PD and provided some further comments and evidence it wished to be considered.

Having received the relevant responses from both parties, I'm now finalising my 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 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 only relate to the issue of whether the credit relationship between Mr and Mrs J 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 J 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 it didn't make any further comments in relation to those in its response to my PD. Indeed, it hasn't said it disagrees with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on the PR's points raised in response.

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

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

The PR has provided further comments and evidence which in my view relate to whether Fractional Club membership was marketed 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 J'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 J to enter into the Purchase Agreement and the Credit Agreement.

The PR has provided its further thoughts as to Mr and Mrs J's likely motivations for purchasing Fractional Club membership. I recognise it has interpreted Mr and Mrs J's testimony 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. But I'm not persuaded that the evidence supports the PR's position on the matter.

In my provisional decision I explained the reasons why I didn't think Mr and Mrs J'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, including the additional context it's attempted to provide, I'm not persuaded the conclusion I reached on this point was 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 PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr and Mrs J's purchasing decision. And for that reason, I do not think the credit relationship between Mr and Mrs J and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

### **S140A conclusion**

Given all of the factors I've looked at in this part of my decision, including the relevant relationships, arrangements and payments between the Lender and the Supplier and having taken all of them into account, I'm not persuaded that the credit relationship between Mr and Mrs J 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.

### **Overall conclusion**

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In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs J's Section 75 claims. I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement and related Purchase 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 these reasons, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 4 March 2026.

Nimish Patel  
**Ombudsman**