DRN-6156408

The complaint

Mr and Mrs S'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 claims under Section 75 of the CCA.

Mr and Mrs S are represented in their complaint by a professional representative ("PR").

What happened

I issued a provisional decision on Mr and Mrs S's complaint on 8 December 2025, in which I set out the background to this matter, and my provisional findings. A copy of that provisional decision is appended to, and forms part of, this final decision, so it's not necessary for me to go over all the details again. However, to summarise briefly:

- Mr and Mrs S made two purchases of timeshares from a timeshare provider (the "Supplier") in July 2014 and July 2015 (the "Time of Sale"). The second purchase replaced the first purchase. Only the second purchase (the "Purchase Agreement") was financed by a loan (the "Credit Agreement") from the Lender. The loan consolidated some existing debt from a loan (with a different lender) used to finance the first purchase.

- Mr and Mrs S complained to the Lender in February 2021, seeking to hold it responsible for alleged mis-selling by the Supplier in 2015, under the principles of connected lender liability. Mr and Mrs S's concerns included:

    - That the timeshare had been misrepresented by the Supplier, giving them a claim against the Lender under Section 75 of the CCA.

    - That the Supplier had been in breach of contract, giving them a claim against the Lender under Section 75 of the CCA.

    - That various wrongful acts or omissions by the Supplier or the Lender had rendered their credit relationship with the Lender unfair to them within the meaning of Section 140A of the CCA.

- The Lender rejected the complaint, which was subsequently referred to the Financial Ombudsman Service.

In my provisional decision I concluded that the complaint ought not to be upheld. Again, the full details and reasoning can be found in the appended document, but to summarise:

- I didn't think there had been an actionable misrepresentation by the Supplier for the reasons Mr and Mrs S had alleged.

- I wasn't persuaded that the Supplier had breached the terms of the Purchase Agreement

- I didn't think the credit relationship between Mr and Mrs S, and the Lender, had been rendered unfair to them for any of the reasons alleged, because:
    - I wasn't persuaded that Mr and Mrs S's ability to exercise a decision to go ahead with the purchase had been significantly impaired by pressure from the Supplier.
    - The timeshare was not an unregulated collective investment scheme.
    - I was unable to conclude that there were unfair terms in the Credit Agreement, or that the Lender had breached any regulatory rules or lent to Mr and Mrs S irresponsibly.
    - No commission had been paid by the Lender to the Supplier for arranging the Credit Agreement.
    - While it was possible there may have been information failings on the Supplier's part around the ongoing costs of the timeshare as well as terms which had the potential to be operated unfairly, I couldn't see these had prejudiced Mr and Mrs S's purchasing decision or led to significant harm or unfairness arising to them in practice.
    - I noted the allegation that the timeshare had been sold as an investment in breach of Regulation 14(3) of the Timeshare Regulations, and thought it was *possible* the Supplier could have breached that regulation. However, I didn't think that Mr and Mrs S's testimony suggested that any breach by the Supplier had been material to their purchasing decision.

I invited the parties to the complaint to provide further submissions. The Lender accepted the provisional decision, while PR replied to say it disagreed with it. It made substantial submissions focused on the question of whether or not the Supplier had marketed and sold the timeshare to Mr and Mrs S as an investment, and the impact this had had on their purchasing decision. I think I could fairly summarise its arguments as follows:

- Unfairness of the credit relationship needed to be assessed holistically, so even if Mr and Mrs S had had dual motives for their purchase, it didn't mean that one or other was not material to their decision.
- It was sure that the Supplier had marketed and/or sold the timeshare to Mr and Mrs S as an investment at the Time of Sale, in breach of Regulation 14(3) of the Timeshare Regulations. It didn't matter that the purchase as an upgrade of a previous product – the same messaging around the product being an investment would have been given.
- It was sure that this breach had been material to Mr and Mrs S's purchasing decision. I had been wrong to find that, because Mr and Mrs S's primary motive was to "obtain more points", the Supplier's breach had not been material to their purchasing decision.

PR directed me to specific pieces of evidence which it said showed Mr and Mrs S's investment motivation at the Time of Sale. This included their "Statement of Truth", notes made of a phone call with Mr and Mrs S, on which the Statement of Truth was based, an email from Mr S, and an enquiry form completed by a lead generator following a discussion with Mr S.

The case has been returned to me to decide.

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.

Having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

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

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

PR's comments in response to the provisional decision relate only to the issue of whether the credit relationship between Mr and Mrs S and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to them as an investment at the Time of Sale, and their motivation for going ahead with their purchase.

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

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

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

In my provisional decision I ultimately made no finding on whether or not the Supplier had breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale in July 2015, because I was unconvinced, based on Mr and Mrs S's testimony, that any such breach had played a material part in their purchasing decision. I had considered their Statement of Truth and didn't think this came across at all, stating:

> *"Mrs S explained that she and Mr S had been in contact with the Supplier's representatives on holidays after their initial purchase, because they had wanted to get out of their agreement. She said the representatives had tried to persuade them to invest in apartments in Florida, and then (it seems on the same holiday they upgraded to the Signature Collection) fully managed apartments in Turkey which they could purchase on, in essence, a buy-to-let basis. They had declined both sales pitches.*
>
> *However, Mrs S then says the Supplier persuaded her and Mr S to upgrade to the Signature Collection. Mrs S's recollections seem slightly unclear on the reasons why she and her husband decided to upgrade, but the reasons mentioned in her statement are:*
>
> - *The Signature Collection upgrade came with a maid service.*
> - *They had been offered unspecified incentives along with a waiver of management fees.*

- *They had been given the impression it would be easy to leave the membership at a later date.*

Significantly, Mrs S doesn't refer to having upgraded with any hope or expectation that the product would lead to a financial gain or profit (i.e. that it was an investment), nor does she in fact say that the Supplier marketed the upgrade in this way. The fact that Mr and Mrs S had also declined to participate in what were overt property investments with the Supplier, also suggests that making financial investments with the Supplier was not a priority for them."

PR argues that Mrs S says elsewhere in the statement that the Supplier told them the timeshare was an investment. I agree that Mrs S does refer to the Supplier selling them a timeshare in this way, even suggesting that a manager of the Supplier used this as a way of persuading her and Mr S to go ahead with their purchase. But what PR appears to have missed is that it's apparent Mrs S is talking about her earlier purchase in 2014, which this complaint is not about.

PR is, I think, inviting me to find that the Supplier is likely to have made the same representations about the timeshare being an investment at the time Mr and Mrs S upgraded in 2015. But it doesn't necessarily follow that that was the case. Mrs S doesn't appear to say in her statement that the Supplier marketed or sold it in this way at the Time of Sale in 2015.

I've considered the other documents PR has referred to. The first of these is a set of handwritten notes recorded by one of its employees while on the phone with Mr or Mrs S. I understand the statement was drafted based on these notes. The other documents are an email from Mr S making an enquiry with a lead generator for timeshare complaints, and a form completed by that lead generator after speaking to Mr S.

The call notes broadly reflect the content of the statement. Notes are made that, at the time of the 2014 sale, a manager told Mr and Mrs S the timeshare was an investment. The note also says they were told they would make a profit. The notes then go on to outline the financing arrangements for the first purchase, before going on to describe what happened at the Time of Sale in 2015. Like the statement itself, there is a lack of detail relating to this sale. In fact, there is even less detail. The notes do not even refer to the maid service or other incentives referred to in the statement. Instead, they refer to Mr and Mrs S feeling pressured at a time when their child was very ill, and of the Supplier telling them the resort at which the upgraded timeshare was located was "easier to book".

The notes then go on to describe the financing arrangements for the second purchase. After this, the notes say:

"timeshare is marketed as a financial investment and holidays at anytime"

It's unclear which purchase is being referred to here. The fact that the note is made in the singular, rather than plural, suggests one purchase only, or that the comment could be a general one. And the fact that it appears after the section of the notes dealing with the 2015 purchase (but not, in my view, as part of that section), does not obviously link the comment to the 2015 purchase.

The email from Mr S to the lead generator does refer to his *"investment…not working out"* but names the timeshare he is referring to as the timeshare purchased in 2014, not 2015.

Finally, the form completed by the lead generator does list both the 2014 and 2015 purchases, and contains the following comment:

"High pressure sales meeting, 5hrs
told investment & could holiday very year and would sell at end of term and receive profit and children would benefit – Big selling point."

Again, it's not clear which purchase is being referred to, but the timescale of 5 hours is consistent with the description in the call notes of the 2014 sale, and the description of the product being sold as an investment is *also* consistent with the notes relating to the 2014 sale. I think, on balance, it's more likely than not that the 2014 sale is being described here too.

This is, in my view, quite a finely-balanced case. However, I would need to give the benefit of the doubt to Mr and Mrs S's testimony in multiple places to be able to conclude that:

A) At the Time of Sale in 2015, the Supplier sold or marketed the upgraded timeshare to them as an investment, thus breaching Regulation 14(3) of the Timeshare Regulations; and
B) If a breach occurred, it was material to Mr and Mrs S's purchasing decision at the Time of Sale.

And, given what I've said above, I just don't think the evidence in this case is quite persuasive enough for me to be able to do that.

It is possible that Mr and Mrs S were still under the impression, due to the discussions they had with the Supplier in the lead up to the 2014 sale, that the Supplier's timeshare products were investments. But that doesn't mean that the Supplier pitched the upgrade to them in 2015 as an investment as well, or that Mr and Mrs S's decision to *upgrade* was motivated specifically by the prospect of making a financial gain.

So, for the reasons I've explained, I remain of the view that Mr and Mrs S' credit relationship with the Lender was not rendered unfair to them as a result of any breach by the Supplier of Regulation 14(3) at the Time of Sale in 2015.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 16 March 2026.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

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

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

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

The complaint

Mr and Mrs S'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 claims under Section 75 of the CCA.

What happened

Mr and Mr S purchased two timeshares from a timeshare provider (the 'Supplier') in 2014 and 2015. This complaint concerns the latter of these two purchases, but to put things in their proper context I'll also outline the details of the earlier purchase.

The first purchase took place in July 2014 and was of a membership to a timeshare I will call the 'Fractional Club'. Mr and Mrs S purchased 1,200 'points' in this club for £12,294, financed by a loan with another lender. These points were added to Mr and Mrs S's membership every other year, and could be redeemed against accommodation in the Supplier's portfolio. Fractional Club membership was also asset backed – which meant it gave Mr and Mrs S more than just holiday rights. It also included a share in the net sale proceeds of a named property (the 'Allocated Property') after their membership term ends.

Mr and Mrs S then went on to trade in their Fractional Club membership on 30 July 2015, for a membership in the Supplier's 'Signature Collection'. They signed an agreement to do so – the 'Purchase Agreement'. The Signature Collection was a variation on the Fractional Club, where Mr and Mrs S were entitled to book, every other year, the specific Allocated Property named on the Purchase Agreement. This was said to be a particularly luxurious category of apartment. If Mr and Mrs S did not book this specific apartment, it could be converted into 1,540 points, which could be used as normal to book other accommodation. As with their previous product, Mr and Mrs S were entitled to a share in the net sale proceeds of the Allocated Property at the end of the membership.

The Signature Collection membership had a price of £17,267, but Mr and Mrs S were given consideration of £7,800 for trading in their existing Fractional Club membership, leaving them with £9,467 to pay. Finance was arranged with the Lender of £21,667 in joint names. The amount of credit was higher than the purchase price because it included the consolidation of the previous loan (£12,200) with the other lender.

I will use the terms 'Fractional Club' and 'Signature Collection' interchangeably in this

decision, given the latter was an upgraded variety of the former. It will be clear from the context if at any point I am referring to the previous Fractional Club membership purchased in 2014.

Mr and Mrs S – using a professional representative ('PR') – wrote to the Lender on 18 February 2021 to complain (the 'Letter of Complaint'). While the way the complaint was explained and particularised was slightly confusing, it could be summarised as follows:

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

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

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

1. told them that Fractional Club membership was a kind of investment and would grow in value when that wasn't true.
2. told them that they would own a part of the resort in question.
3. failed to explain to them that their children could inherit their timeshare liability if they died.

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

(2) Section 75 of the CCA: the Supplier's breach of contract

Mr and Mrs S say that they were never able to book the holiday apartment of their choice, and found it very difficult to secure holidays under their membership.

PR formulated the above concern as a complaint of misrepresentation, however it would more accurately be described as a breach of contract. In other words, Mr and Mrs S say that they have a breach of contract claim against the Supplier, and therefore, under Section 75 of the CCA, they have a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr and Mrs S.

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

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

1. The Fractional Club product was an Unregulated Collective Investment Scheme ("UCIS"). To promote this product to Mr and Mrs S had been illegal, and the Lender acted wrongfully in providing credit to finance the purchase of such a product.

2. The interest rate on the loan was unfairly high – far in excess of the Bank of England base rate at the time. This was unfair under the Unfair Terms in Consumer Contract

Regulations 1999 ("UTCCR"). Additionally, Mr and Mrs S were given no choice of other lenders. This was also unfair.

3. The Lender had breached principles 2, 6 and 8 of the Financial Conduct Authority's principles, namely:

    a. Not conducting its business with skill, care and diligence.
    b. Not paying due regard to the interests of its customers or treating them fairly.
    c. Not managing conflicts of interest fairly.

4. The payment of a secret commission from the Lender to the Supplier.

5. The decision to lend being irresponsible because the right checks hadn't been carried out before this decision was made.

The Lender dealt with Mr and Mrs S's concerns as a complaint and issued its final response letter on 27 April 2021, rejecting it on every ground.

Mr and Mrs S then referred the complaint to the Financial Ombudsman Service. PR elaborated on certain points of complaint at this stage. For example, it said that sales presentations it had obtained from the Supplier reinforced its argument that the product had been misrepresented as an investment. PR also added:

- That the Supplier had misled Mr and Mrs S about the end date of their membership – indicating that it had a specific end date when in fact the end date could be postponed for two years.
- That the credit relationship between Mr and Mrs S and the Lender had been rendered unfair by the Supplier's poor provision of relevant information (for example about ongoing fees) at the Time of Sale, meaning they were unable to make an informed decision about the purchase.
- It was unfair that the Credit Agreement and Purchase Agreement lengths did not align.

We were also sent a witness statement, dated 29 November 2020, written by Mrs S and narrating her and Mr S's experiences with the Supplier. From this statement further concerns about the sale of the Fractional Club membership in July 2015 emerged, specifically:

- That they were put under a lot of pressure by the Supplier to upgrade.

One of our Investigators looked into the matter. He thought the complaint should be upheld because the Supplier had, contrary to Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ("Timeshare Regulations"), sold or marketed the Fractional Club product to Mr and Mrs S in July 2015 as an investment.

Both the Lender and Mr and Mrs S disagreed with our Investigator's assessment, and so the case has been passed to me to decide. Broadly speaking, the Lender disagreed with the assessment because:

- It didn't think Mr and Mrs S had bought the Signature Collection upgrade to their Fractional Club membership because it had been sold as an investment. It thought they had more likely upgraded because of the increased luxury and flexibility, based on contemporaneous sales notes.
- It thought there were some inconsistencies/inaccuracies in Mrs S's witness statement.
- Mr and Mrs M had gone down from a 0.97% share in the Allocated Property to a 0.53% share when upgrading to the Signature Collection. This was not suggestive of the prospect of the product being an investment being important to their purchasing decision.

And Mr and Mrs S disagreed because they considered the amount of compensation recommended by our Investigator was too low.

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. 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

What I've provisionally decided – and why

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

And having done that, I do not currently think this complaint should be upheld.

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

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

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

This part of the complaint was made for several reasons that I set out at the start of this decision. However, I don't think there was an actionable misrepresentation by the Supplier for the following reasons:

- PR says the Supplier indicated to Mr and Mrs S that their membership would come to an end on a specific date, failing to tell them that in fact the sale of the Allocated Property could be postponed. However, there's nothing in the documents dating to the Time of Sale which leads me to believe that unqualified guarantees would have been given that the membership would come to an end on a specific date. The documents explain that the property would be marketed for sale after a set time, and I can't see that Mr and Mrs S were told anything different to that.

- Regarding the alleged failure of the Supplier to tell Mr and Mrs S that, on their death, their children would inherit the liabilities associated with the membership, such as the maintenance fees, this is an alleged omission, and omissions do not, in most cases, amount to misrepresentation. But in any event, I have seen no evidence in the documents relating to the Fractional Club that Mr and Mrs S's liabilities would pass to their children if they were to die.

- PR says Fractional Club membership had been misrepresented by the Supplier because Mr and Mrs S were told they would effectively own a piece of the resort (i.e. property), and that the product was an investment, when that was not true. However, telling prospective members that they were buying a fraction or share of one of the Supplier's properties was not untrue. Mr and Mrs S's share in the Allocated Property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while PR might question the exact legal mechanism used to give them that interest, it did not change the fact that they acquired such an interest. And this interest was also, in my view, an investment, because it offered the prospect of a financial return. So it was not a misrepresentation if the Supplier described the product as an investment. It would have been wrongful, for other reasons, for the Supplier to have marketed the product in that way – and I look at that point in further detail later on.

What's more, as there's nothing else on file that persuades there were any false statements of existing fact made to Mr and Mrs S by the Supplier at the Time of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reasons they allege.

For these reasons, therefore, I do not think the Lender is liable to pay Mr and Mrs S any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

Section 75 of the CCA: the Supplier's breach of contract

I've already summarised how Section 75 of the CCA works and why it gives Mr and Mrs S a right of recourse against the Lender. So, it isn't necessary to repeat that here.

PR said, on behalf of Mr and Mrs S, that they were never able to book the holiday apartment of their choice, and found it very difficult to secure holidays under their membership – which, on my reading of the complaint, suggests that they consider that the Supplier was not living up to its end of the bargain, and had breached the Purchase Agreement.

However, I don't recognise this particular complaint in Mrs S's witness statement. She has never referred to this sort of problem. What does come across is that, due to changed circumstances such as ill health and having grown up children, the membership no longer suits her family's needs.

I think it would also be unusual for Mr and Mrs S to have problems booking with this specific version of the Fractional Club membership (the Signature Collection), and that is because they are essentially guaranteed a specific luxury apartment so long as they book more than three months in advance. I have not seen enough to persuade me that the Supplier breached the terms of the Purchase Agreement in relation to Mr and Mrs S's rights to book accommodation or the specific week they were entitled to.

I note that elsewhere in the witness statement Mrs S also says she is worried that there is no guarantee that she and Mr S will receive their share of the net sale proceeds of the Allocated Property. I understand that Mrs S is saying that she fears that, when the time comes for the Allocated Property to be sold, she and Mr S will not receive their share of the sales proceeds, or it may be impossible for the property to be sold due to oversupply. However, it would seem that any breach of contract (if that occurs) lies in the future and is currently uncertain.

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mr and Mrs S 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 when it dealt with the Section 75 claim in question.

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

I have already explained why I am not persuaded that the contract entered into by Mr and Mrs S was misrepresented (or breached) by the Supplier in a way that makes for a successful claim under Section 75 of the CCA and outcome in this complaint. But Mr and Mrs S also say that the credit relationship between them and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time of Sale that they have concerns about. It is those concerns that I explore here.

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

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

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

Unregulated Collective Investment Scheme

It's my understanding that PR no longer maintains the Fractional Club product was a UCIS and therefore illegal, and so its arguments in relation to this are no longer relevant. However, for the avoidance of doubt, my view is that the product was not a UCIS because timeshare contracts (which the Purchase Agreement is) are excluded from the definition of a UCIS.[1]

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

Mr and Mrs S's complaint about the Lender being party to an unfair credit relationship was also made for several other reasons, all of which I set out at the start of this decision.

While PR did not make this point in the Letter of Complaint, I note from the witness statement that Mr and Mrs S say they felt pressured into upgrading their Fractional Club membership to the Signature Collection. I've no doubt that Mr and Mrs S may have felt worn down from a lengthy sales process and wanted to get back to their youngest son, who I understand was back at their apartment, feeling unwell. However I've not seen any evidence of what exactly the Supplier said or did which meant Mr and Mrs S felt they simply had no choice but to upgrade their membership when they didn't want to. They were also given a cooling off period of 14 days, and they've not provided a credible explanation for why they did not cancel the upgrade in that time if they had only signed up because they felt under pressure to do so. Ultimately there is insufficient evidence to demonstrate that Mr and Mrs S made the decision to upgrade their Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

PR also says the interest rate of the loan was unfair under the UTCCR. I don't think this can be correct, because the UTCCR does not cover terms which relate to the price of a contract, so long as those terms are in "plain intelligible language". The interest rate is the main term which sets the price of a loan, and in Mr and Mrs S's Credit Agreement the rate is clearly set out in the way the CCA requires it to be. In the circumstances, it is difficult to see how the interest rate could be considered an unfair term. It is also difficult to see how the lack of alignment between the end dates of the Purchase Agreement and Credit Agreement could be a source of unfairness, and PR hasn't elaborated further on this point.

[1] *Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001*, section 13 (as amended)

Regarding the alleged breaches of the FCA's Principles, it's not clear from PR's submissions how it is that it thinks the Lender breached the Principles. I found its arguments on this point rather difficult to follow, but they seem to relate in part to Mr and Mrs S not being offered a choice of lenders. It's my understanding that the Supplier had commercial arrangements with several lenders (such as the one which financed the previous purchase) and PR hasn't explained how the selection of the Lender by the Supplier has resulted in unfairness arising in practice.

The PR says that the right checks weren't carried out before the Lender lent to Mr and Mrs S. There is a general lack of evidence pointing either way on this point. 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 S 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. No evidence has been put forward to show that the lending was unaffordable for Mr and Mrs S. If there is any further information on this (or any other points raised in this provisional decision) that Mr and Mrs S wishes to provide, I would invite them to do so in response to this provisional decision.

I'm not persuaded, therefore, that Mr and Mrs S'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 their credit relationship with the Lender may have been unfair to them. And that's the possibility that Fractional Club membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Mr and Mrs S's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling membership of the Fractional Club as an investment. This is what the provision said at the Time of Sale:

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

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

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

As I've already said in this decision, Mr and Mrs S's share in the Allocated Property clearly, in my view, constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare

contract *per se*.

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

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs S 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 S, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was for the primary purpose of holidays, and the Supplier made no representations as to the future value or price of the fraction Mr and Mrs S had purchased. So, it's *possible* that Fractional Club membership wasn't marketed or sold to them as an investment in breach of Regulation 14(3).

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

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

Was the credit relationship between the Lender and Mr and Mrs S rendered unfair to them?

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

And in light of what the courts had to say in *Carney* and *Kerrigan,* it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs S 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.

I return to the witness statement at this point, as it is an important piece of evidence which sheds some light on what Mr and Mrs S recall from the Time of Sale, both of what happened, and of their motivations for going ahead with the upgrade to the Signature Collection.

Mrs S explained that she and Mr S had been in contact with the Supplier's representatives on holidays after their initial purchase, because they had wanted to get out of their agreement. She said the representatives had tried to persuade them to invest in apartments in Florida, and then (it seems on the same holiday they upgraded to the Signature Collection) fully managed apartments in Turkey which they could purchase on, in essence, a buy-to-let basis. They had declined both sales pitches.

However, Mrs S then says the Supplier persuaded her and Mr S to upgrade to the Signature Collection. Mrs S's recollections seem slightly unclear on the reasons why she and her husband decided to upgrade, but the reasons mentioned in her statement are:

- The Signature Collection upgrade came with a maid service.
- They had been offered unspecified incentives along with a waiver of management fees.
- They had been given the impression it would be easy to leave the membership at a later date.

Significantly, Mrs S doesn't refer to having upgraded with any hope or expectation that the product would lead to a financial gain or profit (i.e. that it was an investment), nor does she in fact say that the Supplier marketed the upgrade in this way. The fact that Mr and Mrs S had also declined to participate in what were overt property investments with the Supplier, also suggests that making financial investments with the Supplier was not a priority for them.

On balance, therefore, even if the Supplier had marketed or sold the upgrade to 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 S'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 gone 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 S and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

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

It is clear from the submissions of everyone involved in this complaint that a lot of information passed between the Supplier and Mr and Mrs S when they upgraded their Fractional Club membership at the Time of Sale. But they and PR say that the Supplier failed to provide them with all of the information they needed to make an informed decision. Specifically, PR says not enough information was provided as to the ongoing fees associated with the membership.

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

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

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

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

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

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

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

But given the facts and circumstances of this complaint, I am not persuaded that the Supplier's alleged breaches of regulation 12 of the Timeshare Regulations and the UTCCR are likely to have prejudiced Mr and Mrs S's purchasing decision at the Time of Sale and rendered their credit relationship with the Lender unfair to them for the purposes of section 140A of the CCA. And I say this because Mr and Mr S haven't provided any information or evidence which would lead me to believe that any potential breaches of regulation 12 of the Timeshare Regulations by the Supplier, or the inclusion of unfair terms in the Purchase Agreement, has led to any significant harm or unfairness to them arising *in practice*.

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

The alleged payment of a commission from the Lender to the Supplier

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

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v*

FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 (‘*Hopcraft, Johnson and Wrench*’).

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

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

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

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

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

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

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

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

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

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

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 S 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.

Commission: The Alternative Grounds of Complaint

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

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

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

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 and Mrs S'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.

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

My provisional decision

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

Will Culley
Ombudsman