

## The complaint

Mr L and Mrs L'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 a claim under Section 75 of the CCA.

## What happened

Mr L and Mrs L 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 31 May 2016 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 850 fractional points at a cost of £13937 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr L and Mrs L 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.

After paying £500 using a credit card, Mr L and Mrs L paid for their Fractional Club membership by taking finance of £13437 from the Lender (the 'Credit Agreement').

Mr L and Mrs L – using a professional representative (the 'PR') – wrote to the Lender on 25 April 2023 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr L and Mrs L's concerns as a complaint and issued its final response letter on 3 May 2023, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, upheld the complaint and thought the Lender should put things right.

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') dated 18 February 2026. In that decision, I said:

*"I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I do not think this complaint should be upheld.*

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

considered it.

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

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

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

*Here, the Lender has said that it doesn't need to answer this claim due to the operation of the Limitation Act 1980 and I agree. That is because the Time of Sale was 31 May 2016, and in respect of this purchase, the claim was first made to the Lender on 25 April 2023, more than six years from when the alleged misrepresentations were made at the Time of Sale.*

*However, this is somewhat academic as the alleged misrepresentations are still things the Lender could be responsible to answer under the operation of section 140A CCA. So, I have considered them here.*

*It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr L and Mrs L were:*

- 1. Told that they had purchased an investment that would "considerably appreciate in value".*
- 2. Promised a considerable return on their investment because they were told that they would own a share in a property that would considerably increase in value.*
- 3. Told that they could sell their Fractional Club membership to the Supplier or easily to third parties at a profit.*
- 4. Made to believe that they would have access to "the holiday apartment" at any time all year round.*

*However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn't any accompanying evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.*

*As for points 3 and 4, while it's possible that Fractional Club membership was misrepresented at the Time of Sale for one or both of those reasons, I don't think it's probable. They're given little to none of the colour or context necessary to demonstrating that the Supplier made false statements of existing fact and/or opinion. And as there isn't any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for these reasons, I don't think it was.*

*So, while I recognise that Mr L and Mrs L - and the PR - have concerns about the way*

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

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

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

*Having considered the entirety of the credit relationship between Mr L and Mrs L 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 in relation to Fractional Club membership, including the contractual documentation and disclaimers made by the Supplier.*
- 3. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements.*
- 4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale.*
- 5. The inherent probabilities of the sale given its circumstances; and, when relevant*
- 6. 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 L and Mrs L and the Lender given their circumstances at the Time of Sale.*

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

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

*The PR says, for instance, that the right checks weren't carried out before the Lender lent to Mr L and Mrs L. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr L and Mrs L was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr L and Mrs L.*

*Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr L and Mrs L knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for them, even if*

*the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mr L and Mrs L's financial loss – such that I can say that the credit relationship in question was unfair on them as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate them, even if the loan wasn't arranged properly.*

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

*I acknowledge that Mr L and Mrs L 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 L and Mrs L made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.*

*Mr L and Mrs L's witness statement makes reference to them paying a deposit of £500 at the Time of Sale. This is reflected in the amount they borrowed (£13437) for the purchase of the Fractional Club membership. The Lender has evidence the £500 was collected by the Supplier on 16 May 2016. It seems reasonably clear to me that this amount was not paid at the Time of Sale, and Mr L and Mrs L could have cancelled this payment within the 14-day cooling off period I've previously mentioned. As I've not seen any evidence that the £500 was collected by the Supplier until after the 14 days, I don't think the Lender did anything wrong here.*

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

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

*To conclude, therefore, that Fractional Club membership was marketed or sold to Mr L and Mrs L 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 L and Mrs L, 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 L and Mrs L 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.*

***Would the credit relationship between the Lender and Mr L and Mrs L have been rendered unfair to them had there been a breach of Regulation 14(3) of the Timeshare Regulations?***

*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 L and Mrs L 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 L and Mrs L 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.*

*When the PR sent the Letter of Complaint to the Lender they did not provide a witness statement from Mr L and Mrs L. But when the PR brought the complaint to the Financial Ombudsman Service on 23 October 2023, they provided an undated witness statement from Mr L and Mrs L.*

*In its response to our Investigator's view, the Lender expressed some concern about when this witness statement was completed as it was not provided to it at the time the Letter of Complaint was sent.*

*Regardless of when the statement was written, Mr L and Mrs L purchased the fractional membership in May 2016, but didn't complain until August 2022, over six years after the Time of Sale. The PR didn't provide Mr L and Mrs L's undated witness statement detailing their recollections from the Time of Sale until October 2023. This is more than seven years after the Time of Sale. The courts have long taken the position that memories fade and change over time and that being a part of a complaints process can also affect one's memories.*

*The witness statement was provided after the judgment in R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS') was handed down. And as experience tells me that, the more time that passes between a complaint and the event complained about, the more risk there is of recollections being vague, inaccurate and/or influenced by discussion with others, I find it difficult to understand why the Lender was not provided with such evidence when the PR submitted the Letter of Complaint.*

*Indeed, as there isn't any other evidence on file to corroborate Mr L and Mrs L's very recent evidence about their motivations at the Time of Sale, there seems to me to be a very real risk that Mr L and Mrs L's recollections provided in their witness statement were coloured by the judgment in Shawbrook & BPF v FOS. And with that being the case, at this time I'm not persuaded that I can give their written recollections the weight necessary to finding that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.*

*Of course, I'm happy to take into account any comments or other evidence Mr L and Mrs L or the PR can provide, before I consider making a final decision. And, if there is any evidence Mr L and Mrs L's witness statement was prepared before the judgment in Shawbrook & BPF v FOS was handed down, I will take this into account.*

*Regardless of this, Mr L and Mrs L's witness statement says very little to help me decide what it was that motivated them to purchase Fractional Club membership. The majority of the one page statement refers to areas of complaint that I have addressed earlier in my provisional decision. But, on the subject of the investment element of the membership, the statement makes little reference to the role this played in Mr L and Mrs L's decision to purchase Fractional Club membership. And, if this had been an important and motivating factor in their decision to purchase, I would have expected their witness statement to have contained more compelling evidence of what the Supplier said to them, or provided them*

with, that indicated they would make a profit from owning a fractional share of the Allocated Property. However, in this regard Mr L and Mrs L say:

*“The fractional ownership was sold to us as an investment and that it would be like something we would own and could pass on to our children. We liked the fact that we would be owners and that we could earn extra income as well as being able to both sell it and make a profit from it or hand it down to our children.”*

*I’ve also looked at the Members Declaration that Mr L and Mrs L signed dated 31 May 2016. As well as signing this document at the Time of Sale, Mrs L initialled the document at each of the sections from 1-8 and 10-15. In this regard, section 5 says:*

*‘We understand that the purchase of our Fraction is for the primary purpose of holidays and is not specifically for direct purposes of a trade in and that [the Supplier] makes no representation as to the future price or value of the Fractional Rights which are personal rights and not interests in real estate (all as explained in the Information statement)’*

*Having considered all of the evidence available to me, I think that Mr L and Mrs L had a reasonable understanding of how the Fractional Club membership gave them a share in the allocated property. But on my reading of the evidence before me, they have not persuaded me that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when they decided to go ahead with their purchase.*

*That doesn’t mean they weren’t interested in a share in the Allocated Property. After all, that wouldn’t be surprising given the nature of the product at the centre of this complaint. But as Mr L and Mrs L’s witness statement doesn’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 Mr L and Mrs L 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 L and Mrs L’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 more likely than not 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 L and Mrs L and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).*

### **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 L and Mrs L 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.”*

In conclusion, given the facts and circumstances of this complaint, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mr L and Mrs L’s Section 75 claim and I was 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 Mr L and Mrs L.

The Lender responded to the PD and accepted it].

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

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

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

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

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

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

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

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

### The FCA's Principles

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

- Principle 6
- Principle 7
- Principle 8

### **What I've decided – and why**

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

Following the responses from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

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

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

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

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

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

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

The PR said that at the time this claim was filed with the Lender and subsequently referred to our service, there was no requirement for a witness statement to accompany the claim, nor were their stipulations in place in respect of form or content. The PR said the Lender never requested a testimony from Mr L and Mrs L, nor did they refer to the absence of such testimony in their final response to the complaint, and that the testimony supplied is in Mr L and Mrs L's own words using layman's terms. The PR said that this testimony supports that Mr L and Mrs L were led to believe the property would be sold and profits shared among the owners shows that it was indeed marketed as an investment.

Part of my assessment of the testimony was to consider *when* it was written, and whether it may have been affected by external factors such as the widespread publication of the outcome of *Shawbrook and BPF v FOS*<sup>1</sup>.

I have thought about what the PR has said, but I maintain that there is a risk that Mr L and Mrs L's testimony was coloured by the outcome in *Shawbrook & BPF v FOS*. I say this because the witness statement provided is undated and was sent to our service after the widespread publication of the outcome of *Shawbrook and BPF v FOS*. And, on balance, the way in which the evidence has been provided makes me conclude that I can place little weight on it.

Regardless of this, my PD explained that Mr L and Mrs L purchased their Fractional Club membership in May 2016, but didn't complain until August 2022. Their subsequent undated witness statement, detailing their recollections from the Time of Sale, wasn't provided until over seven years after the Time of Sale. The courts have long taken the position that memories fade and change over time and that being a part of a complaints process can also affect one's memories.

The PR said I should determine this complaint on the balance of probabilities and "*what is fair and reasonable*," taking into account all circumstances and the sales context, not solely the existence or absence of formalistic paperwork. In particular the PR said that my reference to the Members Declaration which was signed by Mr L at the Time of sale - which

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<sup>1</sup> *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('*Shawbrook & BPF v FOS*').

was a pre-prepared document presented to Mr L and Mrs L at the end of a long, high-pressure sales meeting – is typical of disclaimer-style forms drafted to protect the Seller. And that I should give more weight to the comments in Mr L and Mrs L’s witness statement.

In light of the PR’s response to the PD, I have again considered the content of Mr L and Mrs L’s witness statement, but, on the subject of the investment element of the membership, the statement makes little reference to the role this played in Mr L and Mrs L’s decision to purchase Fractional Club membership. Mr L and Mrs L say in their witness statement, which the PR relies on as evidence their purchase of Fractional Club membership was sold to them as an investment,

*“The fractional ownership was sold to us as an investment... we liked that we would be owners and could earn extra income, as well as sell it and make a profit or hand it down to our children.”*

Mr L and Mrs L’s witness statement is very brief in relation to this particular allegation. It provides me with little detail as to what exactly they were told, by whom and in what context. And in their own words only represents what they were potentially told at the Time of Sale without giving any insight into what their motivations were for making the purchase.

And, I think it’s reasonable for me to conclude that if this had been an important and motivating factor in their decision to purchase Fractional Club membership, their witness statement would have contained more compelling evidence of what the Supplier said to them, or provided them with, that indicated they would make a profit from owning a fractional share of the Allocated Property.

I have considered all the evidence provided to help me understand what it was that motivated Mr L and Mrs L to upgrade to Fractional Club membership at the Time of Sale – not solely the Members Declaration. And on my reading of this evidence – what Mr L and Mrs L say in their undated witness statement, all the documentation from the Time of Sale and the comments from the lender and the PR – I’ve not been persuaded that the prospect of a financial gain from Fractional Club membership was an important and motivating factor for Mr L and Mrs L when they decided to go ahead with their purchase.

That doesn’t mean they weren’t interested in a share in the Allocated Property. As I said in the PD, that wouldn’t be surprising given the nature of the product at the centre of this complaint. But, for the reasons I’ve already explained, I’m not persuaded that Mr L and Mrs L’s purchase was motivated by their share in the Allocated Property and the possibility of a profit, and 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.

So, 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 L and Mrs L’s purchasing decision.

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

So, as I said before, even if the Supplier had marketed or sold the membership as an

investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr L and Mrs L's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mr L and Mrs L and the Lender was unfair to them for this reason.

### **S140A conclusion**

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Mr L and Mr L 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**

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 L and Mrs L's Section 75 claim. 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 the above reasons, I've decided not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Mrs L to accept or reject my decision before 13 April 2026.

Paul Lawton  
**Ombudsman**