

## The complaint

Mr C and Miss K'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.

## Background to the complaint

Mr C and Miss K 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 20 December 2016 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 540 fractional points which, after trading in their existing membership, cost £8,772 (the 'Purchase Agreement').

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

Mr C and Miss K paid for their Fractional Club membership by taking finance of £10,263 from the Lender (the 'Credit Agreement'), which also consolidated lending they had taken out to purchase their existing membership.

Mr C and Miss K – using a professional representative (the 'PR') – wrote to the Lender on 22 August 2023 (the 'Letter of Complaint') to raise a number of different concerns. Since then the PR has raised some further matters it says are relevant to the outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender acknowledged Mr C and Miss K's concerns as a complaint, but it did not go on to provide a final response.

The complaint was subsequently referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mr C and Miss K disagreed with the Investigator's assessment and asked for an Ombudsman's decision. So the complaint was passed to me to decide. I considered the matter and issued a provisional decision (the 'PD') dated 3 March 2026. In that decision, I said:

*"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."*

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's to decide what's 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.

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

*In considering what's fair and reasonable in all the circumstances of the complaint, I'm required under DISP 3.6.4 R 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's 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

### **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 does not dispute that the relevant conditions are met. But for reasons I'll come on to below, it's not necessary to make any formal findings on them here.*

*In general, lenders can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 (the "LA"), as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose, and after a limitation defence would have been available in court. So, it's relevant to consider if Mr C and Miss K's Section 75 claim for misrepresentation was time-barred under the LA before it was put to the Lender.*

*A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued. Any claim against a lender under Section 75 is also "an action to recover any sum by virtue of any enactment" under Section 9 of the LA. Such claims also have a time limit of six years from the date the cause of action accrued.*

*In claims for misrepresentation, the cause of action accrues at the point a loss is incurred. In Mr C and Miss K's case, that was at the Time of Sale because they entered into the agreement to purchase fractional club membership, and the related Credit Agreement to finance the purchase, based on the alleged misrepresentations of the Supplier which they say they relied on.*

*Mr C and Miss K first notified the Lender of their Section 75 claim on 22 August 2023. As that was more than six years after the Time of Sale, I don't think it was unfair or unreasonable of the Lender to not uphold their claim relating to the Supplier's alleged misrepresentations.*

*However, that is not an end to the matter as misrepresentations made at the Time of Sale can still give rise to an unfair credit relationship, even if the limitation period to make a freestanding claim has passed (see *Scotland and Reast v. British Credit Trust Limited* [2014] EWCA Civ 790). So although I think it was fair for the Lender to reject the claim made under Section 75 of the CCA, I will consider the substance of the alleged misrepresentations 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 C and Miss K were:*

- 1. Told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true.*
- 2. Told by the Supplier that they owned a "fraction" of the Allocated Property when that was not true as it was owned by a trustee.*
- 3. Told by the Supplier that Fractional Club membership was an "investment" when that was not true.*

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

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

*As for point 3, it does not strike me as a misrepresentation even if such a representation had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue – nor was it untrue to tell prospective members that they would receive some money when the allocated property is sold. After all, a share in an allocated property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give prospective members that interest, it did not change the fact that they acquired such an interest.*

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

*So, while I recognise that Mr C and Miss K - and the PR - have concerns about the way in which Fractional Club membership was sold by the Supplier, I can only consider whether there was a factual and material misrepresentation by the Supplier. And for the reasons I've set out above, I'm not persuaded that there was.*

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

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

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

<sup>1</sup> Defined in the FPOC Rules as "CLC Resort Developments Limited".

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

*It's not clear from what Mr C and Miss K have said when they attempted to book a holiday they wanted which they then found they were unable to book. So, it's not clear when their cause of action for a breach of contract claim accrued, and therefore if their claim on this basis was made within the limitation period under the LA.*

*But in any event, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mr C and Miss K states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday. I accept they may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier breached the terms of the Purchase Agreement.*

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

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

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

*Having considered the entirety of the credit relationship between Mr C and Miss K and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:*

- 1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;*
- 2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
- 3. 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 C and Miss K and the Lender.*

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

Mr C and Miss K's complaint about the Lender being party to an unfair credit relationship was and is made for several reasons. It includes allegations that:

1. Mr C and Miss K were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.
2. The right checks were not carried out before the Lender lent to Mr C and Miss K.
3. The loan interest was excessive.
4. The Credit Agreement was arranged by a broker acting outside of its authorisation.

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

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

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr C and Miss K 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'm not satisfied that the lending was unaffordable for Mr C and Miss K.

Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, and the fact the loan was used to refinance an earlier one wasn't set out in the Credit Agreement, 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 C and Miss K knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from, that they were refinancing an earlier loan and that they were borrowing money to pay for Fractional Club membership. 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 or didn't contain all the information it needed to (which I make no formal finding on), I can't see why that led to Mr C and Miss K experiencing a financial loss – such that I can say the credit relationship in question was unfair on them as a result. And with that being the case, I'm not persuaded it would be fair or reasonable to tell the Lender to compensate them, even if the loan wasn't arranged properly.

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

Overall, therefore, I don't think Mr C and Miss K's credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR now says the credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to them as an investment in breach of the 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'm satisfied, that Mr C and Miss K'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 and Mr C and Miss K say that the Supplier did exactly that at the Time of Sale – saying, in summary, that they 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 C and Miss K the prospect of a financial return – whether or not, like all investments, that turned out to be more than what they first put into it. But it's important to note at this stage that the fact 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 C and Miss K 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's 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 C and Miss K, 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 the Supplier's sales process left open the possibility that the sales representative(s) may have positioned Fractional Club membership as an investment. So, I accept it's also possible that Fractional Club membership was marketed and sold to Mr C and Miss K 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 C and Miss K have been rendered unfair to them had there been a breach of Regulation 14(3) of the Timeshare Regulations?**

*Having found 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 C and Miss K 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'm to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr C and Miss K and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.*

*But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mr C and Miss K decided to go ahead with their purchase. The relevant evidence before me is:*

- *A statement from Mr C and Miss K provided by the PR in which they said, in relation to the Time of Sale, that:*

*"I guess we had come around to the idea of spending a few weeks a year at luxury resorts all around the world. What really sold it to us was the opportunity to exchange our points with Interval International, in places like the Caribbean. We were advised to go for the fractional ownership and enticed with Interval etc.*

- *A handwritten call note provided by the PR of a call it had with Mr C and Miss K which included the following:*

*"We were taken for a free breakfast and told to attend meeting. Long meeting and they kept pushing Fractional investment... So they say if you buy Fractional – after 19 years when property sold, you get a fraction of total cost of the profit on sale – however if you go to hotel cost is paid but you never get anything back in future so fractional is a good investment. Plus getting luxurious holidays.*

*Then they made comparison to your home & mortgage – house is an investment so in future you can leave for children as inheritance or if sale make a profit so that make you think fractional good idea.*

*We were not sure so they convinced us to buy the trial membership and they can arrange the loan.*

*1 year later we went to Spain on holiday and we were pushed by rep to attend another meeting. This was a long meeting – 5 or 6 hours – pressure to purchase fractional more than before. Same points raised as last meeting with them of luxury hols and fractional ownership (sic)."*

- *A claim form Mr C completed for a third party company with a view to relinquishing Fractional Club membership. The form asked him to indicate by ticking "yes" or "no" if he was told, amongst other things, that:*
  - *"Your timeshare would increase in value"*
  - *"Your timeshare is a financial investment"*

*Mr C ticked yes for both of these statements, and added in a comments section that, "on 1<sup>st</sup> hol upgrade to Fractional – great way to save through holiday as waste money with travel agent with this pay now & goes up + get profit in 19 years (sic)."*

*Mr C and Miss K did not say anything in their statement about being told by the Supplier at the Time of Sale that Fractional Club membership offered them the prospect of a financial gain. Nor did they say anything that indicated membership appealed to them because of the prospect of making a financial gain from it. Rather, as the quote I've set out above shows, their statement provides a clear indication that their purchase was motivated by the holiday opportunities under membership.*

*The call note and claim form suggest Mr C and Miss K's purchase of Fractional Club membership was motivated by the prospect of a financial gain. However, I don't find I can place as much weight on this evidence as I can on Mr C and Miss K's statement. Their statement reads to me as having been written by them in their own words, and indeed it has been wet signed by them. So I'm satisfied it's a reliable reflection of their recollections of their dealings with the Supplier.*

*Whereas the call note was written by the PR and as such it represents the PR's account of what was discussed during its call with Mr C and Miss K. I accept it's possibility that the note accurately reflects what Mr C and Miss K said about the Time of Sale during the call. But I haven't been provided with a recording of the call that corroborates the contents of the note. And while the claim form was completed by Mr C, the questions posed on the form appear to me to be leading and not open and inquisitive. Moreover, the call note and claim form are not consistent with the contents of Mr C and Miss K's statement with regard to what it was that motivated them to go ahead their purchase.*

*With all of that said, I'm not currently persuaded by the evidence before me that Mr C and Miss K were motivated to go ahead with their purchase by the prospect of a financial gain. That does not mean they were not 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 C and Miss K themselves don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.*

*On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I'm not persuaded that Mr C and Miss K'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 proceeded 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 C and Miss K and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).*

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

*The PR says Mr C and Miss K were not given sufficient information at the Time of Sale by the Supplier about Fractional Club membership, including about the ongoing costs of membership and the fact that Mr C and Miss K's heirs could inherit these costs.*

*As I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.*

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

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

### **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 C and Miss K and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. And as things currently stand, I do not 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 C and Miss K's Section 75 claims, and I was not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

I gave both parties the opportunity to respond to the PD. The PR responded stating it did not accept the PD, and it provided some further comments and evidence it wished to be considered. The Lender confirmed it had nothing further to add.

As the parties have now had the opportunity to respond to the PD, and having received the responses I mentioned above, I'm now finalising my decision on this complaint.

### **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 is not to address every single point which has been made to date, but to decide what's fair and reasonable in the circumstances of this complaint. If I have not commented on, or referred to, something that either party has said, this does not mean I have not 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 C and Miss K and the Lender was unfair to them. In particular, the PR has provided further comments in relation to whether the membership was sold to them as an investment at the Time of Sale.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But it didn't make any further comments in relation to all of those points in its response to my PD. Indeed, it hasn't said it disagrees with any of my provisional conclusions in relation to those other points. Since I have not 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 its 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 argues the evidence it has provided is consistent in showing the Supplier marketed Fractional Club membership to Mr C and Miss K as an investment in breach of Regulation 14(3) of the Timeshare regulations. It says this breach, the Supplier's high-pressure sales presentation, and the fact Mr C and Miss K had recently exited an Individual Voluntary Arrangement and therefore had concerns about their ability to afford the loan, cumulatively rendered the credit relationship unfair to them.

I explained in my PD that the evidence before me did not lead me to conclude that Mr C and Miss K made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier, nor did the evidence persuade me that the lending was unaffordable for them. I've carefully considered the PR's comments on these points, but I don't find its comments include anything new that persuades me to depart from my provisional conclusions on these points.

As I also explained in my PD, while the Supplier's sales processes left open the possibility that the sales representative(s) may have positioned Fractional Club membership as an investment, it's not necessary to make a finding on this as it's not determinative of the outcome to the complaint. I explained that regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. As such, to uphold Mr C and Miss K's complaint because of a breach of Regulation 14(3), I would have to be persuaded that any breach, if it did occur, led them to enter into the Purchase Agreement and Credit Agreement.

The PR's comments in this respect do not persuade me that I should uphold Mr C and Miss K's complaint because they do not make me think it's any more likely that the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement. The evidence the PR has pointed to indicates the Supplier may have breached Regulation 14(3), but it does not automatically follow that this was material to Mr C and Miss K's purchasing decision. And like I explained in my PD, their statement (which I still consider provides the most reliable reflection of their recollections of their dealings with the Supplier) does not make out that they were motivated to go ahead with their purchase at the Time of Sale by the prospect of a financial gain.

The PR has provided further comments on Mr C and Miss K's motivations for purchasing Fractional Club membership at the Time of Sale. It says the fact their statement emphasized the value they placed on the holiday rights of membership does not negate any breach of Regulation 14(3), and that a profit motivation was also present. I agree with the PR that Mr C and Miss K's interest in the holiday rights of membership does not mean any breach of Regulation 14(3) by the Supplier could not have been material to their purchasing decision. But like I have said, as they themselves don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

So, ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr C and Miss K's purchasing decision. And for that reason, I do not think the credit relationship between Mr C and Miss K and the Lender was unfair to them even if the Supplier had breached Regulation 14(3). As such, I don't find the points the PR has raised individually or cumulatively rendered the credit relationship between Mr C and Miss K and the Lender unfair to them.

#### **S140A: Conclusion**

Given all of the factors I've looked at in this part of my decision, including the relevant relationships, arrangements and payments between the Lender and the Supplier and having taken all of them into account, I'm not persuaded that the credit relationship between Mr C and Miss K and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. So, I don't think it's fair or reasonable that I uphold this complaint on that basis.

## **Overall conclusion**

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Given the facts and circumstances of this complaint, I do not think the Lender acted unfairly or unreasonably in relation to Mr C and Miss K's Section 75 claims, and I'm not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

## **My final decision**

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Miss K to accept or reject my decision before 15 April 2026.

Asa Burnett  
**Ombudsman**