DRN-6282925

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 a claim under Section 75 of the CCA.

What happened

I issued a provisional decision on this complaint on 26 March 2026 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 to go over all the details again. However, to summarise briefly:

- Mr and Mrs S bought a timeshare from a timeshare provider (the "Supplier") on 19 March 2014 (the "Time of Sale"). They traded in their existing timeshare with the Supplier for £20,500 and paid a further £14,780, for a membership and 21,000 points in the Supplier's "Fractional Club" (the "Purchase Agreement"). The Fractional Club was a kind of asset-backed timeshare that came with a 15 year term, and entitled Mr and Mrs S to a share in the net sale proceeds of a property named on their Purchase Agreement (the "Allocated Property") when the membership came to an end.

- A loan of £14,780 (the "Credit Agreement") was arranged with the Lender to finance the purchase, repayable over 120 months at £236.78 per month, but Mr and Mrs S repaid it in full within a few weeks of entering the agreement.

- Mr and Mrs S later complained, through a professional representative (the "PR") about a number of matters which could broadly be described as alleged mis-selling by the Supplier of the timeshare. They sought to hold the Lender responsible for both the Supplier's and its own alleged wrongdoing under Section 75 of the CCA and Section 140A of the CCA. Mr and Mrs S's concerns included:

    - That the Supplier had misrepresented aspects of the purchase to them, such as by telling them the Fractional Club membership was guaranteed to end in 15 years, and that it was the only way to leave their relationship with the Supplier.

    - That the Supplier had failed to tell them they would lose a valuable benefit of their previous timeshare if they converted to the Fractional Club.

    - That they may not be entitled to any part of the sale proceeds in the future as they had nothing in writing to show they had an interest in the Allocated Property. This was a breach of contract.

    - The Supplier had improperly pressured them into making the purchase.

    - The Lender had failed to carry out an appropriate checks before lending to them, and had paid a commission to the Supplier for arranging the Credit

Agreement, that had not been properly disclosed.

The Lender rejected the complaint, and it was subsequently referred to the Financial Ombudsman Service. There were lengthy delays in us being able to give an answer, and some years after the complaint was referred to us, Mr and Mrs S added to their complaint that the Supplier had sold them the Fractional Club membership as an investment, contrary to the regulations on selling timeshares.

In my provisional decision, I said I didn't think the complaint should be upheld. My full reasoning can be found in the appended document. But to summarise again:

- I concluded Section 75 of the CCA – which covers misrepresentations and breaches of contract – didn't apply to Mr and Mrs S's purchase, because the price of the Fractional Club membership had been over £30,000. So I was unable to consider their concerns about misrepresentation or breach of contract under this part of the CCA. However, I noted that I could consider their breach of contract concerns under Section 75A of the CCA, and their misrepresentation concerns under Section 140A of the CCA.

- I didn't think there had been a breach of contract by the Supplier in relation to the Fractional Club membership. Mr and Mrs S were expressing concerns about something that may or may not happen in the future, and it would be premature to conclude the Supplier would breach the contract in 2029 when the sales process for the Allocated Property was due to begin.

- I didn't think the Supplier had misrepresented the purchase to Mr and Mrs S:

    - I thought it unlikely the Supplier had made unequivocal or unqualified statements that the membership was guaranteed to end in 15 years. The paperwork Mr and Mrs S had completed at the Time of Sale had qualified the end date.

    - I thought it was unlikely the Supplier had told Mr and Mrs S that their only way to exit their relationship with the Supplier was by converting their existing timeshare to the Fractional Club. Mr and Mrs S had never actually claimed the Supplier told them this, and the Supplier's policies, along with notes it had made at the Time of Sale, suggested it had told Mr and Mrs S that they had other options.

- I thought the Supplier probably had omitted to tell Mr and Mrs S that they would lose a certain valuable benefit of their existing timeshare, if they converted to the Fractional Club, and that this was potentially a misleading omission. That said, I didn't think this had prejudiced Mr and Mrs S's purchasing decision, as I concluded, based on their usage of the benefit in question, that they would likely have proceeded even had this information been revealed to them.

- There was insufficient persuasive evidence that Mr and Mrs S had made the purchase because their ability to exercise a choice to do so was significantly impaired by improper pressure from the Supplier.

- Even if the Lender had failed to carry out the creditworthiness checks it should have (and I made no such finding), no evidence had been offered that the Credit Agreement was in fact unaffordable for Mr and Mrs S, which would have needed to have been shown for their complaint to be successful on this ground.

- I thought there was insufficient persuasive evidence that the Supplier had improperly marketed or sold the Fractional Club membership to Mr and Mrs S as an investment or, if it had, that this had had a material impact on their decision to go ahead with the purchase.

- While a commission had been paid by the Lender to the Supplier for arranging the Credit Agreement, the amount had not been high. There was also nothing else about the commission arrangements between the Lender and the Supplier at the Time of Sale which led me to believe any unfairness had resulted to Mr and Mrs S. I noted the Supplier had had no fiduciary duty to Mr and Mrs S.

I invited the parties to respond to my provisional decision. The Lender said it accepted the provisional decision. PR, on behalf of Mr and Mrs S, has not responded.

The case has now 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.

I note that neither party to the complaint has provided any further evidence, arguments or submissions for me to consider. In light of this, and having looked at everything again, I see no reason to depart from the findings and conclusions I reached in the appended provisional decision (as summarised above).

This means that I don't think the Lender was unreasonable in declining to honour a claim from Mr and Mrs S under Section 75 (or Section 75A) of the CCA, nor do I think the Lender participated in a credit relationship with Mr and Mrs S that was unfair to them within the meaning of Section 140A of the CCA. While I'm aware my decision will disappoint them, I cannot see any other reason why their complaint should be upheld.

My final decision

For the reasons summarised above, and explained in more detail 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 8 May 2026.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at the same general set of conclusions as our Investigator, but I've explained my reasons in more detail, so I'm issuing this provisional decision to give the parties to the complaint a further opportunity to provide submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is **9 April 2026**. 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 a claim under Section 75 of the CCA.

What happened

Mr and Mrs S had been long-term timeshare owners, having owned two fixed weeks in a specific resort since August 1991. At some point between then and February 2000, their resort came to be under the umbrella of a larger timeshare provider (the "Supplier") or its predecessor companies. It was in this month that Mr and Mrs S traded in their two fixed weeks for a membership of the Supplier's "European Collection".

The European Collection was a kind of holiday club in which members received an annual allocation of "points" which could be exchanged for accommodation within the Supplier's portfolio of resorts. Mr and Mrs S say they paid £2,249 to buy into the club, which included an extra amount which they said was for something called "Home Week Priority". This, I understand, gave them a first option to reserve their previous fixed weeks in any given year. Mr and Mrs S say these weeks were in peak holiday season and were therefore quite valuable.

By the end of June 2010, Mr and Mrs S had acquired a total of 20,500 points in the European Collection. Their final purchase from the Supplier took place on 19 March 2014 (the "Time of Sale"), which involved swapping their European Collection points, for points in a new product offered by the Supplier, which I'll call the "Fractional Club".

Mr and Mrs S traded in their 20,500 European Collection membership and points, along with £14,780, for 21,000 points in the Fractional Club (the "Purchase Agreement"). It appears the full price, had they not traded in their existing points and membership, would have been £35,280. Mr and Mrs S received a "Travel Savings Bonus" of £2,200 for making their purchase. With Fractional Club membership, Mr and Mrs S could use their points to holiday in the same resorts as they could with their previous membership, and seemingly on the same terms.

However, Fractional Club membership also differed from European Collection membership in four key areas. Firstly, it had a significantly shorter term than the European Collection

membership, and was intended to end in 15 years (around 2029). The European Collection membership was not due to end until 2054. Secondly, Fractional Club membership entitled Mr and Mrs S to a share in the net sale proceeds of a property named on the Purchase Agreement (the "Allocated Property"), when the membership came to an end. Thirdly, Fractional Club membership entitled Mr and Mrs S to deposit their points in a "Wish to Rent" programme operated by the Supplier. This gave Mr and Mrs S a small amount of money if their points were rented to other people, and a commission if those people bought a product from the Supplier. Finally, Fractional Club membership did not come with the option of "Home Week Priority", meaning Mr and Mrs S would lose that particular benefit.

Mr and Mrs S paid for their Fractional Club membership by taking finance of £14,780 from the Lender in joint names (the "Credit Agreement"). The loan was repayable over 120 months at £236.78 per month, but Mr and Mr S repaid the loan early, within a matter of weeks of entering the agreement.

It appears that, around the end of 2015, Mr and Mrs S complained to the Supplier about having lost their Home Week Priority benefit. The Supplier responded to these concerns by explaining that this benefit was not included in the Fractional Club membership but that it could try to book the previously guaranteed weeks for Mr and Mrs S with no promise that they would be available.

Mr and Mrs S – using a professional representative (the 'PR') – wrote to the Lender on 7 February 2017 (the "Letter of Complaint") to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving them 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

PR says, on Mr and Mrs S's behalf, that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. Told them that the only way to exit their customer relationship with the Supplier was by converting their European Collection membership to Fractional Club membership, when this wasn't true.
2. Told them that Fractional Club membership came with a guaranteed exit after 15 years, when this wasn't true.

Mr and Mrs S says 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 Mr and Mrs S.

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

Mr and Mrs S say that the Supplier is in breach of the Purchase Agreement because they have nothing in writing to confirm they own part of the Allocated Property, so there can be no guarantee that they will receive any part of the proceeds of sale in the future.

As a result of the above, 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 reasons why Mr and Mrs S say that the credit relationship between them and the Lender was unfair to them under Section 140A of the CCA. In summary, they include the following:

1. They were pressured into purchasing Fractional Club membership by the Supplier.
2. The decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness assessment.
3. The Lender paid the Supplier a commission for arranging the loan that was not properly disclosed to them.

The Letter of Complaint was written by PR but came with a statement from Mr and Mrs S directly titled: *"A statement as to why we feel we were mis-sold the [Supplier] Fractional…Club holding".*

Mr and Mrs S's own statement set out the following points:

- The contract stated that the Allocated Property would be sold on 31 December 2028, yielding a cash return to them.
- It had been their intention to avoid an open-ended liability from passing to their children and the Supplier's salesman had represented to them that converting to the Fractional Club product would achieve this.
- It had subsequently come to their attention that the contract may not deliver the outcome promised.
- The Supplier had failed to inform them that converting to the Fractional Club would involve losing their Home Week Priority benefit.

The Lender dealt with Mr and Mrs S's concerns as a complaint and issued its final response letter on 21 April 2017, rejecting it on every ground. The complaint was referred to the Financial Ombudsman Service shortly after.

There was then a lengthy delay in the Financial Ombudsman Service being able to consider the complaint. In the meantime, in December 2023, PR made a further submission which included a copy of a different witness statement from Mr and Mrs S. PR said this statement had been received from Mr and Mrs S on 5 February 2017. This statement, which I'll call the "Alternate Statement", put Mr and Mrs S's complaint in rather different terms. I could summarise the concerns they raised specifically about the Fractional Club membership in this statement as follows:

- The Fractional Club had been presented as an investment opportunity with property holdings in a number of named resorts.
- They had been advised to take out a loan they didn't need and then pay it off as soon as they got home, which they did.

The complaint was eventually assessed by an Investigator who, having considered the information on file, didn't think it should be upheld. Mr and Mrs S disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

The legal and regulatory context

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

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

What I've provisionally decided – and why

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

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 will 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. One of these conditions is that the cash price of the item being purchased is no more than £30,000. I noted above that the price of the Fractional Club membership, before the trade-in of Mr and Mrs S's existing holdings, was £35,280. This means Section 75 does not apply to their purchase and so the Lender did not act unfairly or unreasonably in declining a Section 75 claim.

Misrepresentations can be a relevant factor when considering the fairness of a credit relationship within the meaning Section 140A of the CCA, so I've gone on to consider the alleged misrepresentations in a later section of this decision.

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

Mr and Mrs S's claim under Section 75 of the CCA for breach of contract fails for the same reason as their claim for misrepresentation does – Section 75 doesn't apply to the purchase due to the overall purchase price. However, Section 75A is a separate section of the CCA which covers breaches of contract in relation to point of sale loans only, and does not contain the same ceiling of £30,000. I'm satisfied the conditions for Mr and Mrs S to make a claim under Section 75A were in place here, so I've gone on to consider whether the Lender ought to have honoured their claim in respect of breach of contract, had it been framed specifically as a claim made under Section 75A of the CCA.

Mr and Mrs S's claim is that the Supplier is in breach of the Purchase Agreement because there is no guarantee that they will receive their share of the net sale proceeds of the Allocated Property. I understand they are saying that they fear that, when the time comes for the Allocated Property to be sold, they will not receive their share of the sales proceeds. However, it would seem that any breach of contract (if that occurs) lies in the future and is currently uncertain. I don't see a reason, in the circumstances, to conclude that the Supplier is in breach of contract *now* or will inevitably breach the contract in the future.

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 breached by the Supplier in a way that makes for a successful claim under Section 75A of the CCA 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. First, however, I'll consider the matter of the Supplier's alleged misrepresentations which I previously explained could not be dealt with as part of a Section 75 claim against the Lender, due to the technical conditions for a Section 75 claim to be made, not having been met.

I recognise that Mr and Mrs S have concerns about the way in which their Fractional Club membership was sold, but they have not persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for the other reasons they allege.

One of the allegations made by PR on behalf of Mr and Mrs S, and repeated in their original statement, was that the Supplier had falsely told them either that Fractional Club membership was guaranteed to end in 15 years, or that it would allow them to avoid passing on an open-ended liability to their children, or potentially both of these things.

I'm doubtful that unequivocal guarantees were given by the Supplier to Mr and Mrs S as to the exact date on which their Fractional Club membership would come to an end. The front page of the Purchase Agreement gives a "Proposed Sale Date" of 31 December 2028 – which is 15 years from the Time of Sale (give or take a few months). On the same page, the Supplier said that the membership would come to an end *"on or after the Proposed Sale Date",* and later in the sales documentation I note the Supplier commented that the sale would take place *"on the Proposed Sale Date…or as soon as reasonably practicable thereafter."*

Furthermore, I can see Mr and Mr S signed a declaration, on which they had ticked "YES" next to the following statement:

"We understand that the Property referenced on our Purchase Agreement will be sold as soon as possible on or after the Proposed Sale Date. However, we realise that it may not be possible to source a buyer immediately, and that in the event that the sale is effected on or after the Proposed Sale Date, we will be required to pay our Dues each year until the Property is sold."

While determining what happened during a sales process is not always as simple as looking at the paperwork, Mr and Mrs S don't convince me that the Supplier told them anything at the Time of Sale that was substantially different to the relatively detailed declaration that they ticked to confirm their agreement to.

The other related allegation made by PR on Mr and Mrs S's behalf is that the Supplier told them that converting their European Collection membership to the Fractional Club was the *only* way out of their relationship with the Supplier. While this would have been false to say, I think it's unlikely this is what the Supplier said at the Time of Sale.

Mr and Mrs S don't claim, in their own statement, that the Supplier told them this. I'm also aware that the Supplier's sales policies by the Time of Sale required staff to inform prospective customers who were asking about leaving the European Collection, of their other options to leave the club (for example, on the grounds of age or ill health). Finally, in the notes the Supplier made following the Time of Sale, it recorded: "*Explained the relinquishment options. Happy to proceed."* Based on the available evidence, I don't think the Supplier told Mr and Mrs S that buying Fractional Club membership was their only way out of their customer relationship.

What's more, as there's nothing else on file that persuades me 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, which could have led to Mr and Mrs S's credit relationship with the Lender having been rendered unfair to them.

Other potential reasons for unfairness in the credit relationship

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.

But before I go on to do that I need to comment on some evidential discrepancies concerning witness statements submitted on behalf of Mr and Mrs S. As mentioned earlier in this decision, there have been two statements from Mr and Mrs S. The first statement was received by the Financial Ombudsman Service in May 2017, while the Alternate Statement was received in December 2023.

PR says that the Alternate Statement was received as part of a pack of documents from Mr and Mrs S on 5 February 2017, and that it was sending us the whole pack because one of the documents within it was dated to show when it was received. The second document in the pack is indeed stamped with "Received 5 February 2017".

The Financial Ombudsman Service received a different pack from PR in May 2017. It contained the same document which had been stamped as having been received on 5 February 2017, but without this stamp on it. It seems strange to me that a document stamped to record its receipt on 5 February 2017, could be sent to the Financial Ombudsman Service some months later, missing this stamp. I also note that the Lender must have received the original witness statement in early 2017, because it responded specifically to the concerns raised in it. It did not respond to the concerns raised in the Alternate Statement. It seems additionally strange that Mr and Mrs S would write two rather different witness statements at about the same point in time, with one only coming to light many years later.

There could, of course, be an innocent explanation for these discrepancies, but in my mind the provenance of the Alternate Statement has to be called into question. This questionable provenance, the differences to the original statement, and its emergence as a piece of evidence so late in the complaints process, means I can only place the most minimal amount of weight on it as evidence of what happened at the Time of Sale and what Mr and Mrs S's motivations were at that point.

That said, I don't think the concerns around the Alternate Statement tarnish the original witness statement. I think it's likely the original statement is representative of what Mr and Mrs S recalled of the Time of Sale.

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 made for several reasons, all of which I set out at the start of this decision.

They include the allegation that the Supplier misled Mr and Mrs S by failing to tell them that they would lose their Home Week Priority benefit when converting to the Fractional Club. I accept it's likely the Supplier failed to tell Mr and Mrs S that they would lose this benefit – no mention of it is made in the Supplier's notes dating to the Time of Sale, nor is there any warning in the Purchase Agreement or in any marketing literature I think it's likely would have been shown to Mr and Mrs S at the Time of Sale. In fact, I think some of the marketing literature would have led a purchaser with Home Week Priority to believe they would *keep* this benefit.

I've thought about whether this was a misleading omission and whether it prejudiced Mr and Mrs S's purchasing decision. I think it's possible this *was* a misleading omission, but in my view it's unlikely to have had a significant impact on Mr and Mrs S's decision to go ahead with the purchase. I note that, between 2000 when they first gained Home Week Priority, and their purchase of Fractional Club membership in 2014, Mr and Mrs S only used the benefit in one year. In all other years it appears they used their points to go on holiday elsewhere or at different times. So while Mr and Mrs S later emphasised the importance of this benefit to them, this doesn't appear to be supported by their (lack of) usage of it over the years. I note that, when they complained to the Supplier about the loss of the benefit, the Supplier offered to try to book the specific week(s) for them on request. It's my understanding they never made such a request. In light of this, and on balance, I don't think, had they been clearly informed they would lose Home Week Priority as part of their conversion to Fractional Club membership, that this would have made a difference to their purchasing decision, and I'm unable to conclude it rendered their credit relationship with the Lender unfair to them.

Mr and Mrs S have also said the Supplier pressured them into going ahead with the purchase. I accept that the Supplier's sales process may have been lengthy, and Mr and Mrs S may have felt worn down by it, but they say little of what the Supplier said or did which made them feel as though they had *no choice* but to go ahead with the purchase. I also note that Mr and Mrs S signed to acknowledge that they had a 14-day cooling off period in which to cancel their purchase. The purpose of such cooling off periods is to allow for reflection away from the sales environment. If Mr and Mrs S had been pressured into agreeing to the purchase, I don't understand why they would not have exercised their right to cancel it later. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs S made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

PR says that the right checks weren't carried out before the Lender lent to Mr and Mrs S. 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 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. Again, from the information provided, I am not satisfied 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 wish 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 PR now says their 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.

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.

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. For example, in the signed declaration I've referred to already in this decision, Mr and Mrs S were asked to acknowledge that the Fractional Club membership shouldn't be considered a property or financial investment. I'm also aware that the Supplier required its salespeople to sign an agreement that they wouldn't market the product to customers as an investment.

So, it's *possible* that Fractional Club membership wasn't marketed or sold to Mr and Mrs S as an investment in breach of Regulation 14(3).

On the other hand, I've seen material over the course of the Financial Ombudsman Service's investigation of complaints involving fractional timeshares, which appears to be connected to the marketing and sale of the Fractional Club membership and which *does* appear to position the product as an investment, either expressly or impliedly. The Supplier has argued that these materials were either never used, or were unauthorised and would only have been used locally and in a very limited capacity. That may or may not be the case, but I think I have to accept that it's also possible that Fractional Club membership was marketed and sold to Mr and Mrs S as an investment in breach of Regulation 14(3).

In this case, however, I *don't* think it's likely the Supplier marketed or sold the product to Mr and Mrs S as an investment. Neither Mr and Mrs S, nor PR, complained or said that the Supplier had marketed or sold the product in this way, at the time of the Letter of Complaint. Mr and Mrs S said only that the Supplier had told them they would receive a "cash return". I don't see in their original statement any suggestion that they'd expected the return to be more than what they'd originally put in, so it doesn't seem to me that the Supplier is likely to have said or implied that they would make a financial gain or profit.

While I recognise Mr and Mrs S recall in the Alternate Statement that the Supplier marketed or sold the product to them as an investment, I'm unable to attach sufficient weight to that statement for the reasons already explained, to be able to conclude the Supplier did in fact market or sell the product to them in that way. So my conclusion is that the Supplier did not breach Regulation 14(3) in the circumstances of this particular purchase.

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.

But as I've already said, there was no suggestion in Mr and Mrs S's initial recollections of the sales process at the Time of Sale that the Supplier led them to believe that the Fractional Club membership was an investment from which they would make a financial gain nor was there any indication that they were induced into the purchase on that basis.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs 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 pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr and Mrs 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

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.

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.

I acknowledge that it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But as I've said before, 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. And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I don't currently think any such failure is itself a reason to find the credit relationship in question unfair to Mr and Mrs S.

In contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mr and Mrs S entered into wasn't high. At £1,182.40, it was only 7.96% of the amount borrowed and 8.67% as a proportion of the charge for credit. So, had they known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. And at such a low level, the impact of commission on the cost of the credit they needed for a timeshare they wanted doesn't strike me as disproportionate. So, I think they would still have taken out the loan to fund their purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr and Mrs 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.

Overall, therefore, I'm not currently persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr and Mrs 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 aren't, in my view, available to them. 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 claim, 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 currently minded to uphold this complaint.

Will Culley
Ombudsman