DRN-6293915

The complaint

Mrs D and Mrs T complain Shawbrook Bank Limited (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with them under Section 140A of the CCA.

Mrs D and Mrs T are represented in their complaint by a professional representative. The identity of their representative has changed over the course of the complaint, but my understanding is that the entity representing Mrs D and Mrs T now is associated with their original representative. I will refer to both simply as "PR".

What happened

I issued a provisional decision on Mrs D and Mrs T's complaint on 27 March 2026, in which I set out the background to the case and my provisional findings on it. A copy of that provisional decision is appended to, and forms a part of, this final decision, so it's not necessary to go over the details again. However, in very brief summary:

- Mrs D and Mrs T bought two timeshares from a timeshare provider (the "Supplier"):
    - Purchase Agreement 1 – in September 2018 – in which they purchased 1,340 points in the Supplier's "Fractional Club" for £21,135, reduced to £16,740 following the trade-in of an existing "Trial" membership. This was financed by an interest free loan of £14,400 from the Lender ("Credit Agreement 1"). The remaining balance was paid by other means.
    - Purchase Agreement 2 – in June 2019 – in which they traded in their existing membership for 1,400 points in the "Signature" variation of the Fractional Club membership. The price was £28,897, reduced to £11,087 after trading in the previous membership. Another interest free loan ("Credit Agreement 2") was arranged with the Lender, for £20,987, which covered the balance of the purchase price and £9,000 outstanding from Credit Agreement 1.
- Both timeshares were a type of asset-backed timeshare which entitled Mrs D and Mrs T to more than holiday rights. It also entitled them to a share in the proceeds of a property named on their purchase agreement (the "Allocated Property") after their contract came to an end. The key difference between the first Fractional Club membership, and the Signature variation, was the fact that the latter gave Mrs D and Mrs T the right to stay in the Allocated Property – a luxury apartment – in week 37 of the year.
- Mrs D and Mrs T later complained, via a professional representative ("PR"), to the Lender about a number of concerns which included misrepresentations by the Supplier giving them a claim against the Lender under Section 75 of the CCA, and matters giving rise to an unfair credit relationship between them and the Lender.
- The Lender failed to respond the complaint, which was then referred to the Financial Ombudsman Service for an independent assessment.

In my provisional decision I said I didn't think the complaint should be upheld. Again, my full findings can be found in the appended provisional decision, but in very brief summary:

- The Lender had not been unfair or unreasonable in declining Mrs D and Mrs T's Section 75 claims for misrepresentation because:
  - Some of the alleged misrepresentations were in fact true statements or statements of opinion which there was no evidence to demonstrate were not honestly held.
  - The remaining alleged misrepresentations were too vague and lacking in colour and context to be able to draw a positive conclusion that the Supplier had made false statements of specific fact to Mrs D and Mrs T.
- The Lender had not participated in a credit relationship with Mrs D and Mrs T that was unfair to them because:
  - Regardless of whether the Lender had carried out appropriate checks before lending to Mrs D and Mrs T, there was a lack of evidence the loans had been unaffordable for them at the time.
  - The credit broker which had arranged the Credit Agreements, had held the relevant permissions to do so from the industry regulator. The employment status of the broker's staff wasn't a relevant factor.
  - There was insufficient persuasive evidence that Mrs D and Mrs T had only signed up for the timeshares because their ability to make a choice had been significantly impaired by pressure from the Supplier.
  - While unfair terms within the Purchase Agreements had been referred to by PR, I couldn't see that these terms had been operated in an unfair way with respect to Mrs D and Mrs T, or caused them to behave to their detriment, or prejudiced their purchasing decisions.
  - It was possible the Supplier had breached Regulation 14(3) of the Timeshare Regulations by marketing the timeshares to Mrs D and Mrs T as an investment, but I thought Mrs D and Mrs T's testimony did not persuasively make the case that they'd understood the products to be an investment in the sense agreed in the relevant case law – something which came with an expectation or hope of profit or financial gain. This meant it was difficult to conclude that any improper marketing by the Supplier in breach of Regulation 14(3), had led them into the purchases and caused unfairness in their credit relationship with the Lender. In relation to Purchase Agreement 2 I thought it was especially clear that Mrs D and Mrs T had had other reasons for making the purchase – specifically to guarantee themselves accommodation of the standard they expected.

I invited the parties to the complaint to respond to my provisional decision. The Lender said it had nothing to add. PR didn't agree with the provisional decision, and asked me to consider various additional points relating to the alleged sale of the timeshare as an investment, but also relating to the alleged non-disclosure of a commission paid by the Lender to the Supplier for arranging the Credit Agreement. The case has now been returned to me to decide.

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:

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

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

- CONC 3.7.3R
- CONC 4.5.3R
- CONC 4.5.2G

<u>The FCA's Principles</u>

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

- Principle 6
- Principle 7
- Principle 8

What I've 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.

PR's comments in response to the provisional decision relate only to the issue of whether the credit relationship between Mrs D and Mrs T and the Lender was unfair. In particular, PR has provided further comments in relation to whether the timeshare were sold to Mrs D and Mrs T as investments at the Time of Sale, and the impact of this on their purchasing decisions. It has also now argued for the first time that the payment of commission by the Lender to the Supplier led to an unfair credit relationship.

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

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

A general point PR has made in response to my provisional decision is that the burden of proof is on the Lender to demonstrate that its credit relationship with Mrs D and Mrs T was *not* unfair.

I think it is important to make the point that, in contrast to what might happen in court, neither side to this complaint has a burden of proof that it must discharge. After all, the jurisdiction under which I'm deciding this complaint is inquisitorial rather than adversarial – which means that my findings are made, on the balance of probabilities, in light of the evidence and/or arguments from both sides.

So, while PR has argued that, under Section 140B of the CCA, it is for the Lender to prove that its credit relationship with Mrs D and Mrs T wasn't unfair simply because they allege that it was, I think that fails to understand that the Financial Ombudsman Service deals with complaints rather than causes of action. And, in any event, to suggest that unsubstantiated allegations of fact must be disproved by the Lender if the credit relationship isn't to be deemed unfair also oversimplifies if not misunderstands the legal position. As HHJ David Cooke said in paragraph 26 of his judgment on *Promontoria (Henrico) Ltd v. Gurcharn Samra [2019] EWHC 2327 (Ch):*

"…the onus is on [the creditor] to show, to the normal civil standard, that the relationship is not unfair because of any of the reasons set out in s 140A(1)(a)-(c). Whether it is so unfair is a matter for the court's overall judgment having regard to all the relevant circumstances and matters, including matters relating (i.e. personal) to the creditor and debtor. This onus on the claimant does not however mean, in my judgement…that where [the borrower alleging an unfair credit relationship] makes allegations of fact on which he relies he does not have the burden of proving them to the normal civil standard. The onus placed on the creditor is as to the relationship between it and the debtor, and does not have the effect that factual allegations made by Mr Samra must be accepted unless they can be positively disproved by contrary evidence."

Another general point to note is that PR has not made any distinction between Purchase Agreement 1 and Purchase Agreement 2 in its response to my provisional decision. I have assumed that it disagrees with me on the same grounds for both purchases.

<u>The Supplier's alleged breach of Regulation 14(3) of the Timeshare regulations</u>

PR says it disagrees with my assessment of Mrs D and Mrs T's witness statement and the other evidence. I could summarise its arguments as follows:

- It considered the words used by Mrs D and Mrs T in their witness statement were indicative of them understanding the Fractional Club product as being an investment in the sense agreed in the relevant case law – that it was a transaction in which money or other property was being laid out in the expectation or hope of a financial gain or profit. PR argued that Mrs D and Mrs T's words indicated that they at least had a hope of making a financial gain. Just because their anticipated gains may have been modest, didn't mean they didn't have such a hope or expectation, or that the Supplier had marketed the products in a way that was compliant with Regulation 14(3) of the Timeshare Regulations.

- Mrs D and Mrs T had reported that they'd been led to believe that the Allocated Properties would be sold and the profits shared among the owners, and this was clearly evidence the Supplier had marketed the products as an investment. The Supplier's training materials also showed that it generally marketed and sold the products in question as investments.

- It considered that a breach by the Supplier of Regulation 14(3) was enough by itself to render the credit relationship between Mrs D and Mrs T, and the Lender, unfair to them.

- The fact that Mrs D and Mrs T had referred to the potential gains to be made from the sale of the Allocated Properties, as being an attractive benefit to them, demonstrated that the Supplier's breaches of the regulations had been material to their purchasing decisions.

I understand PR's points, but I don't agree with them. I accepted in the provisional decision there was a possibility that the Supplier had breached Regulation 14(3), especially in relation to Purchase Agreement 1. But I don't accept, as PR has suggested, that a breach alone is enough to render the credit relationship between Mrs D and Mrs T, and the Lender, unfair to them. The reasons for this are set out in dozens of decisions by me and colleagues, but I will set them out again now.

In the case of *Shawbrook & BPF v FOS*, Mrs Justice Collins Rice didn't find that a breach of Regulation 14(3) of the Timeshare Regulations was *"causative of the legal relations entered into".* She recognised that such a breach was *"conduct that knocks away the central consumer protection safeguard"*, but she went on to say that it was the ombudsmen behind the two reviewed decisions who found that such a breach was, given the facts and circumstances of the relevant complaints, causative of the consumers in question purchasing their timeshares and taking out loans to do so.

What's more, the Supreme Court's judgment in *Plevin* makes it clear that regulatory breaches do not automatically 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.

I am also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in *Carney v NM Rothschild & Sons Ltd* [2018] EWHC 958 ("*Carney*") and *Kerrigan v Elevate Credit International Ltd* [2020] EWHC 2169 (Comm) ("*Kerrigan*") (respectively) on causation.

In *Carney*, HHJ Waksman QC said the following in paragraph 51:

"[…] In cases of wrong advice and misrepresentation, it would be odd if any relief could be considered if they did not have at least some material impact on the debtor when deciding whether or not to enter the agreement. […] in a case like the one before me, if in fact the debtors would have entered into the agreement in any event, this must surely count against a finding of unfair relationship under s140A. […]"

And in *Kerrigan*, HHJ Worster said this in paragraphs 213 and 214:

"[…] The terms of section 140A(1) CCA do not impose a requirement of "causation" in the sense that the debtor must show that a breach caused a loss for an award of substantial damages to be made. The focus is on the unfairness of the relationship, and the court's approach to the granting of relief is informed by that, rather than by a demonstration that a particular act caused a particular loss. Section 140A(1) provides only that the court ***may*** *make an order* ***if*** *it determines that the relationship is unfair to the debtor. […]*

[…] There is a link between (i) the failings of the creditor which lead to the unfairness in the relationship, (ii) the unfairness itself, and (iii) the relief. It is not to be analysed in the sort of linear terms which arise when considering causation proper. The court is to have regard to all the relevant circumstances when determining whether the relationship is unfair, and the same sort of approach applies when considering what relief is required to remedy that unfairness. […]"

So, it still seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mrs D and Mrs T and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breaches of Regulation 14(3) (if there were any) led them to enter into the Purchase Agreements and the Credit Agreements is an important consideration.

Indeed, doing that accords with common sense, for if events would have unfolded in the same way whether or not such a pre-contractual breach had occurred, it would be difficult to attribute any particular importance to the breach when deciding whether an unfair debtor-creditor relationship ensued, or whether a remedy is appropriate.

Regarding PR's criticisms of my interpretation of the witness statement, I don't think my interpretation of the witness statement, as set out in the appended provisional decision, is an unreasonable one. I said:

> *"While Mrs D and Mrs T refer multiple times to the concept of investment, what doesn't come across to me is any sense that they expected or hoped to make a profit or financial gain at the end of the membership when the Allocated Property was sold. They refer to getting "money back" and the Supplier achieving "the best price", but I don't think this suggests they expected to get back more than they had put in. The closest Mrs D and Mrs T come to suggesting they expected to make a financial gain is where they refer to "return on…investment", but I think in the overall context of their statement, it's not clear that this means they expected or hoped to make a profit."*

PR appears to claim that Mrs D and Mrs T referred to the owners of the Allocated Property sharing in the profits on its sale, but nowhere in their witness statement do Mrs D and Mrs T refer to profits. PR also seems to suggest that Mrs D and Mrs T referred to the concept of "potential gains", but again, that isn't something they say in their witness statement. I appreciate PR has said that Mrs D and Mrs T are laypeople and that, in essence, their witness statement should be interpreted in a way which is beneficial to their complaint. But I can't attribute words to them which they didn't say, and I think to interpret the witness statement in the way PR invites me to, would stretch the meaning of what Mrs D and Mrs T say a little too far.

Ultimately, without enough evidence that Mrs D and Mrs T's purchase was materially motivated by the prospect of their Fractional Club memberships being an investment in the sense of something that they hoped or expected to make them a financial gain or profit, then

I'm unable to say that any breach by the Supplier of Regulation 14(3) led to a credit relationship with Mrs D and Mrs T that was unfair to them.

<u>The provision of information by the Supplier at the Time of Sale</u>

PR now 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 Mrs D and Mrs T 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 Mrs D and Mrs T, 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 Mrs D and Mrs T into a credit agreement that cost disproportionately more than it otherwise could have. As I have said above – both Credit Agreement 1 and Credit Agreement 2 were interest free – so in fact there were no costs involved with either agreement.

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 think any such failure is itself a reason to find the credit relationship in question unfair to Mrs D and Mrs T.

In contrast to the facts of Mr Johnson's case, no commission was paid by the Lender to the Supplier in relation to Credit Agreements 1 or 2. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not 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 Mrs D and Mrs T.

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 Agreements. And as it wasn't acting as an agent of Mrs D and Mrs T but as the supplier of contractual rights they obtained under the Purchase Agreements, the transactions don't strike me as ones with features that suggest the Supplier had an obligation of "loyalty" to them when arranging the Credit Agreements and thus a fiduciary duty.

Overall, therefore, I'm not 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 Mrs D and Mrs T.

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 Mrs D and Mrs T 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.

Commission: The Alternative Grounds of Complaint

While I've found that Mrs D and Mrs T'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 Mrs D and Mrs T'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 Mrs D and Mrs T (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 Mrs D and Mrs T 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 the purchases at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mrs T to accept or reject my decision before 13 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 a different set of conclusions to our Investigator, so I'm issuing this provisional decision to give both parties a further opportunity to make submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is **10 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 Mrs D and Mrs T, 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

Mrs D and Mrs T complain Shawbrook Bank Limited (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with them under Section 140A of the CCA.

Mrs D and Mrs T are represented in their complaint by a professional representative. The identity of their representative has changed over the course of the complaint, but my understanding is that the entity representing Mrs D and Mrs T now is associated with their original representative. I will refer to both simply as "PR".

What happened

This complaint relates to two timeshare purchases made by Mrs D and Mrs T from a timeshare provider (the "Supplier") in September 2018 and June 2019. Mrs D and Mrs T had previously been "Trial" customers of the Supplier, but their Trial purchase does not form part of this complaint. I've outlined the basic details below:

- The purchase made in September 2018 was of a membership in the Supplier's "Fractional Club". Mrs D and Mrs T bought 1,340 points in the Fractional Club, which could be used to book holiday accommodation annually ("Purchase Agreement 1"). This type of timeshare was also asset-backed, meaning it included a share in the future sale proceeds of a specific timeshare apartment named on Mrs D and Mrs T's purchase paperwork (the "Allocated Property"). The purchase cost £21,135, but was reduced to £16,740 following the trade-in of the previous Trial membership.

- The Supplier arranged a loan ("Credit Agreement 1") with the Lender for £14,400. It seems the remaining balance was paid by credit card. The loan was interest free and was repayable over 24 months at £600 per month.

- The purchase made in June 2019 was of another membership in the Supplier's Fractional Club – in a specific variation of the product I will call "Signature". Mrs D and Mrs T bought 1,400 points in this variation of the membership ("Purchase Agreement 2"). As with the previous purchase, the points could be used to book holiday accommodation annually, and there was a share in an Allocated Property. However, the membership differed from Mrs D and Mrs T's previous one in that they could stay in the Allocated Property – which was a luxury apartment – in week 37 of the year, instead of using their points. This purchase cost £28,897, reduced to

£11,087 after trading in the existing membership.

- The Supplier arranged another loan ("Credit Agreement 2"), of £20,987. This covered both the balance of the purchase price, and £9,000 which was outstanding on Credit Agreement 1, which was settled as part of the deal. Credit Agreement 2 was repayable over 24 months at £836.95 per month. It was settled in July 2021.

- In October 2022, through PR, Mrs D and Mrs T complained to the Lender, seeking to find it responsible for the Supplier having mis-sold the timeshares and associated loans. The individual mis-selling concerns raised by PR can be found in the table below, but broadly-speaking they included misrepresentations for which Mrs D and Mrs T sought to hold the Lender liable under Section 75 of the CCA, and matters which were alleged to have rendered the credit relationship between them and the Lender unfair to them under Section 140A of the CCA.

The Lender failed to respond to the complaint, and the matter was subsequently referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, thought it should be partially upheld. The Investigator thought the first purchase had been marketed to Mrs D and Mrs T as an investment in breach of the regulations on selling timeshares, and that this had rendered their credit relationship with the Lender in relation to Credit Agreement 1, unfair to them. Our Investigator thought there was insufficient evidence to say the complaint about the second purchase ought to be upheld.

Both parties disagreed with our Investigator's assessment. PR thought the complaint should have been upheld in full, while the Lender thought that none of it should have been.

The case has now been passed to me to decide.

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 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 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 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.

I think it's also important at this stage to outline very briefly the general grounds on which Mrs D and Mrs T seek redress from the Lender in relation to what are, at least in part, the

Supplier's alleged wrongdoings as opposed to the Lender's. The grounds are that Mrs D and Mrs T have a claim under Section 75 of the CCA, and Section 140A of the CCA.

Section 75 of the CCA gives a person who has purchased goods or services with certain kinds of credit, a right to claim against their lender in respect of any breach of contract or misrepresentation on the part of the supplier of those goods or services. This is subject to certain technical conditions being met, which I am satisfied have been met in this case.

Section 140A of the CCA operates in a more complex manner. Insofar as is relevant to Mrs D and Mrs T's case, it means that the credit relationship between them and the Lender can be found unfair to them because of anything done (or not done) by, or on behalf of, the Lender.

An unfair credit relationship can also be based on the terms of a related agreement (such as the agreements to buy the timeshares) and, when combined with Section 56 of the CCA, on anything done or not done by the Supplier on the Lender's behalf before the making of the timeshare or loan agreements. The Supplier's acts or omissions during the process of negotiations leading up to the purchases are deemed to be the Lender's responsibility.

As part of my consideration of the matter of Mrs D and Mrs T's claim that there has been an unfair credit relationship, I've thought about, amongst other things, the commission arrangements between the Lender and the Supplier, and the disclosure of those arrangements to Mrs D and Mrs T. I've also thought about any existing unfairness from a related credit agreement, where one exists or existed.

In the interests of efficiency and ease of reading, I have set out my findings in a table format – split by purchase agreement. Where a particular finding requires further explanation or analysis, I have indicated this and provided the further explanation below the table.

Table of Summarised Findings – Purchase Agreement 1

Section 75 - Misrepresentations	**Reason why this complaint doesn't succeed**
It was falsely represented that the product was an investment that would "considerably appreciate in value".	There's insufficient persuasive evidence this was said. If it was said, it would not be untrue to describe the product as an investment as it contained investment features. Any statements regarding future value are likely to have been statements of honest opinion in the absence of evidence to show otherwise.
It was falsely represented that there would be a considerable return on investment because the purchase involved a share in a property that would increase in value.	As per the point above, there is insufficient persuasive evidence these representations were made. If they were, there's insufficient evidence they were anything other than statements of honest opinion.
It was falsely represented that the Fractional Club membership could be sold back to the Supplier or easily to third parties at a profit.	There's very little colour or context to this allegation, meaning it's difficult to conclude the Supplier represented this to be the case. Mrs D and Mrs T also signed to say they understood the Supplier would not buy back the membership except as a trade-in against future purchases.

It was falsely represented that Mrs D and Mrs T would have access to "the holiday apartment" at any time all year round.	This is a vague allegation which also lacks sufficient detail, context or colour to demonstrate the Supplier made such statements. Mrs D and Mrs T refer to being disappointed by their accommodation, but I don't think there's enough evidence to be able to say the holiday-related benefits were misrepresented to them.
Matters allegedly rendering the credit relationship unfair	**Reason why this complaint doesn't succeed**
Mrs D and Mrs T were pressured into making the purchase.	There is little evidence of what specifically the Supplier said or did which meant Mrs D and Mrs T felt they had no choice but to purchase. Mrs D and Mrs T also did not use the cooling-off period to cancel the purchase, which I would have expected had they only purchased because they were pressured into doing so.
The Lender failed to carry out the creditworthiness/affordability checks required by industry guidance or regulations.	Mrs D and Mrs T have not provided evidence that the loan was actually unaffordable, which would need to be shown if the complaint were to succeed on this point.
The Credit Agreement was arranged by self-employed individuals without credit broking permissions, meaning it was unenforceable.	It appears the entity which arranged Credit Agreement 1 held the necessary permissions from the Financial Conduct Authority at the relevant time, so the agreement was not arranged by an unauthorised credit broker. The employment status of the individuals who arranged the loan is not relevant.
The Purchase Agreement contained terms which were unfair to Mrs D and Mrs T, including terms allowing the Supplier to repossess the timeshare for minor breaches.	While there are terms within Purchase Agreement 1 which could be operated in an unfair way, no evidence has been provided that the terms have been operated in this way in practice, or likely will be in future, in Mrs D and Mrs T's case, or that this prejudiced their purchasing decision.
The Supplier marketed and sold the membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations.	While it's possible the Supplier marketed the product in this way, I'm not convinced it did based on the evidence in this case. **See further details below.**

Table of Summarised Findings – Purchase Agreement 2

The complaints made by PR on Mrs D and Mrs T's behalf in relation to Purchase Agreement 2 are identical in nature to the complaints made about Purchase Agreement 1. Rather than reproduce the whole table again, I'll say only that my findings for Purchase Agreement 2 are the same, and for the same reasons, except for:

It was falsely represented that Mrs D and Mrs T would have access to "the holiday apartment" at any time all year round.	This is a vague allegation which also lacks sufficient detail, context or colour to demonstrate the Supplier made such statements. Mrs D and Mrs T were in fact entitled to stay in the Allocated Property annually under Purchase Agreement 2, so to this extent they had "access to the holiday

	apartment", but it's clear from the paperwork that this was only for one week per year.

As with Purchase Agreement 1, the matter of the Supplier's alleged breach of Regulation 14(3) of the Timeshare Regulations requires further analysis, which I will cover presently.

The Supplier's alleged breach of Regulation 14(3) in relation to Purchase Agreement 1

Given what is known about the way in which the Supplier sold Fractional Club memberships, I think it's possible the sales representatives could have said or suggested to Mrs D and Mrs T that Fractional Club membership was an investment which could lead to a financial gain or profit, and that this was a reason to purchase the product, and therefore have acted in contravention of the relevant prohibition in the Timeshare Regulations.

In this case, however, I'm not convinced by the available evidence that the Supplier crossed the line into marketing the product as an investment in the sense that it was something that could or would lead to a financial gain or profit for Mrs D and Mrs T. Or at least, I do not get the impression that this was their understanding of the product or that any prospect of a future financial *gain* was material to their purchasing decision. I'll explain why.

I've seen a relatively long and detailed witness statement from Mrs D and Mrs T which recounts the history of their relationship with the Supplier. The witness statement is undated but appears to have been produced 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. The judgment in that case emphasised, among other things, that the sale of a timeshare as an investment was something which could cause unfairness in a linked credit agreement.

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. And I think there's a risk – given the apparent timing of their witness statement – that Mrs D and Mrs T's recollections could have been influenced by the judgment in *Shawbrook & BPF v FOS*. This is something I've needed to bear in mind when considering their statement.

This is what Mrs D and Mrs T had to say about the Supplier having positioned the Fractional Club membership to them as an investment prior to them entering Purchase Agreement 1:

"…they repeatedly reiterated this was not Timeshare – were you only owned the week/s for a set period of time, then the property would be sold, so you got the best of both worlds – holidays and a return on your long-term investment (property). The percentage we bought in the property, would equate to the percentage we would achieve from the final sale of the investment property when [Supplier] sold it in X years. The maintenance fees were to maintain the property. It would have a complete refurbish at the end of the pre-sale period, to realise the best price on the open market…

…we were reassured that it is the points we are gaining, at peak time. This and the investment – money back – was what we needed to focus on. The appreciated that we would never stay there, nor did we have to, but this investment property gave us the necessary points to book better…

"Plus there was for a long-term investment too, so we would viewed it as a bonus as we would be retired by then – boss [sic] to our pension."

While Mrs D and Mrs T refer multiple times to the concept of investment, what doesn't come across to me is any sense that they expected or hoped to make a profit or financial gain at the end of the membership when the Allocated Property was sold. They refer to getting "money back" and the Supplier achieving "the best price", but I don't think this suggests they expected to get back more than they had put in. The closest Mrs D and Mrs T come to suggesting they expected to make a financial gain is where they refer *to "return on…investment"*, but I think in the overall context of their statement, it's not clear that this means they expected or hoped to make a profit.

Ultimately, Mrs D and Mrs T's testimony isn't enough to persuade me that they understood from what the Supplier had told them, that Fractional Club membership was an investment in the sense it could or would lead to them realising a financial gain. This suggests to me that the Supplier probably *didn't* breach Regulation 14(3) on this particular occasion, and that is the conclusion I've reached in this complaint, in relation to Purchase Agreement 1.

The Supplier's alleged breach of Regulation 14(3) in relation to Purchase Agreement 2

Our Investigator didn't think the Supplier was likely to have breached Regulation 14(3) in relation to this purchase, and I agree.

Going back to Mrs D and Mrs T's statement, it's clear that they initiated discussions with the Supplier prior to entering Purchase Agreement 2, due to their dissatisfaction with the apartment they'd been put in for a holiday in June 2019. They refer to feeling embarrassed by the situation because they had brought family with them, and it seems the Supplier presented the upgrade to the Signature variation of the Fractional Club membership as a solution to their concerns. They say the Supplier showed them the Signature apartments, and these were of the kind of quality they had expected based on previous discussions with the Supplier.

What comes across quite strongly in Mrs D and Mrs T's witness statement, is that they upgraded to the Signature variation of the membership to guarantee themselves accommodation of a certain standard, and that this is what their discussions with the Supplier focused on. They don't say anything about the Supplier having marketed or sold the Signature upgrade as an investment. For that reason, I don't think the Supplier breached Regulation 14(3) of the Timeshare Regulations at the time Mrs D and Mrs T entered Purchase Agreement 2.

Section 140A: Conclusions

Because I don't think the Supplier is likely to have breached Regulation 14(3) of the Timeshare Regulations prior to Mrs D and Mrs T entering either of the Purchase Agreements, I'm unable to conclude that this rendered their credit relationship with the Lender unfair to them. For the reasons already explained, I don't think their credit relationship with the Lender was rendered unfair to them for any of the other reasons mentioned.

My provisional decision

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

Will Culley

Ombudsman