DRN-6296602

The complaint

Mr and Mrs H'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 Mr and Mrs H's complaint on 1 April 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:

- Mr and Mrs H bought a timeshare (the "Fractional Club" membership[1]) from a timeshare provider (the "Supplier") on 5 March 2013 (the "Time of Sale"), for £26,888, reduced to £11,880 after the trade-in of Mr and Mrs H's 15,000 "European Collection" points they already held with the Supplier. The balance was financed by an interest-free loan of the same amount from the Lender (the "Credit Agreement").

- The timeshare entitled Mr and Mrs H to an annual allocation of 16,000 "points" which they could use to book holiday accommodation in the Supplier's portfolio. The timeshare was also asset-backed, entitling Mr and Mrs H 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.

- Mr and Mrs H later complained, via a professional representative ("PR"), to the Lender about a number of concerns which included misrepresentations and a breach of contract 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 rejected the complaint and it 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 to summarise:

- The Lender had not been unfair or unreasonable in declining Mr and Mrs H's Section 75 claim for misrepresentation because:

    - I considered there was insufficient persuasive evidence to conclude the Supplier had falsely claimed that purchasing Fractional Club membership was the only way Mr and Mrs H could leave their European Collection membership. And I was not convinced Mr and Mrs H were in fact eligible to leave their European Collection membership at the Time of Sale, at least not

[1] I have referred to the purchase contract as the "Purchase Agreement" in my decision.

free of charge.

- I considered there was also insufficient persuasive evidence the Supplier had falsely represented to Mr and Mrs H that their Fractional Club membership had a guaranteed or automatic end date. I noted that the paperwork dating to the Time of Sale said only that the Allocated Property would be marketed for sale after a certain number of years, and I wasn't persuaded Mr and Mrs H had been told anything different to this.

- I thought the allegation that Mr and Mrs H had been told, falsely, that they were becoming members of an exclusive club, was somewhat vague. I thought there was insufficient evidence a false statement of fact had been made, noting the sales and marketing materials didn't say or suggest the Supplier's resorts were for members only (which it seemed was what was claimed had been said). I observed that it appeared some of the benefits of club membership did appear to be exclusive to members.

- The Lender had not been unfair or unreasonable in declining Mr and Mrs H's claim Section 75 claim for breach of contract because:

  - The breach of contract PR had referred to was a feared failure by the Supplier to sell the Allocated Property as agreed after 15 years. This was a feared *future* breach that may never happen. I further noted that a delay in the sale would not necessarily be a breach of contract as it was not guaranteed in the contract that the sale would complete on a specific date.

- The Lender had not participated in a credit relationship with Mr and Mrs H that was unfair to them because:

  - There was insufficient persuasive evidence that Mr and Mrs H had only signed up for the timeshare because their ability to make a choice had been significantly impaired by pressure from the Supplier.

  - Regardless of whether or not the Lender had carried out appropriate checks before lending to Mr and Mrs H, there was a lack of evidence the loan had been unaffordable for them at the time, which is something that would have needed to be demonstrated to show that such a failing had led to an unfair credit relationship.

  - Given the Purchase Agreement and Credit Agreement both contained cooling off or withdrawal periods, I failed to see how both agreements being signed on the same day had led to an unfair credit relationship. Similarly, I didn't see how the employment status of the Supplier's sales representatives was relevant to the question of the fairness of the credit relationship.

  - While unfair terms within the Purchase Agreement had been referred to by PR, I couldn't see that these terms had been operated in an unfair way with respect to Mr and Mrs H or caused them to behave to their detriment.

  - It was possible the Supplier had breached Regulation 14(3) of the Timeshare Regulations by marketing the timeshare to Mr and Mrs H as an investment, but I didn't think this was probable. I thought Mr and Mrs H's own testimony indicated that they had not understood the product 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. I also noted that it had not been

alleged when the complaint was first made that the Supplier had sold or marketed the product as an investment, and that Mr and Mrs H had signed a declaration which stated the product was not a property or financial investment. This meant it was difficult to conclude that there had been any breach of Regulation 14(3) by the Supplier which had led them to into the purchase and caused unfairness in their credit relationship with the Lender.

I invited the parties to the complaint to respond to my provisional decision. The Lender accepted the provisional decision. PR didn't agree with the provisional decision, and I think I could fairly summarise the points it made as follows:

- It disagreed with my interpretation of Mr and Mrs H's witness statement:
    - It didn't think my analysis of the timing of the statement and its provenance was fair, noting the statement had always been available but was not provided sooner as it had been advised not to provide it by the Financial Ombudsman Service.
    - It considered I had taken too narrow a reading of Mr and Mrs H's words when I concluded there was insufficient evidence they had thought of the Fractional Club product as an investment in the sense of a hoped for or expected financial gain or profit. It considered Mr and Mrs H's words were more naturally interpreted as meaning they *did* think of the product in this way, and that this understanding had come about as a result of the Supplier having marketed or sold the product to them as an investment, in breach of Regulation 14(3) of the Timeshare Regulations.
- It thought I had been wrong to find that the original Letter of Complaint contained no allegations that the Supplier had wrongfully marketed or sold the Fractional Club membership as an investment. It disagreed that this was a new head of claim raised in 2023. The concerns in the Letter about the guaranteed exit from the timeshare were linked to a "financial exit sale strategy", and the allegation that the timeshare had cost £11,880 but was "not worth that amount in any way", were related to the matter of the product having been marketed or sold as an investment.
- It considered the Fractional Club product represented such poor value for money that it could only have been sold as an investment. It had calculated that, based on the up front and ongoing costs of the timeshare, a single week of holiday would cost Mr and Mrs H £2,400 a year.
- It rejected my conclusion that the Supplier had not misrepresented the Fractional Club product as being an exclusive membership or having a guaranteed end date, or that it would not be a breach of contract if the sale of the Allocated Property was delayed. It had serious concerns about the underlying interest in the Allocated Property and whether Mr and Mrs H would ever be able to benefit from this. In particular:
    - PR argued that Mr and Mrs H's interest, contrary to the agreements governing the ownership of the Allocated Property, had been encumbered by the trustee allowing a charge to be granted over it in favour of a commercial lender. The charge secured certain financial obligations of a company within the Supplier's group.
    - The promise that the Allocated Property would be sold for Mr and Mrs H's benefit was compromised by the rights granted to the commercial lender,

which included the right to require the sale or disposal of the Allocated Property in the event the Supplier's group company defaulted on its obligations.

- It repeated that it had concerns about irresponsible lending, and in particular that the Lender had failed to take into account the ongoing costs of the timeshare – such as maintenance fees – when assessing the affordability of the Credit Agreement.

The case been returned to me to review once more.

The Legal and Regulatory Context

The legal and regulatory context that I think is relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in previous correspondence with the parties. So, there's no need for me to set this out again in detail here. I simply remind the parties that our rules[2] say that in considering what is fair and reasonable in all the circumstances of the complaint, I will take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (when appropriate), what I consider to have been good industry practice at the relevant time.

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.

And having done that afresh, I'm not persuaded to depart from my provisional decision for reasons I'll explain.

Before I do, I want to make it clear that I recognise that this complaint, when originally made, included other grounds of complaint which have not been focused on in PR's submissions following my provisional decision. I have not addressed these other grounds again in this final decision, other than to say that my findings remain the same as in my appended provisional decision, and for the same reasons.

As I said in my provisional decision, my role as an Ombudsman is to decide what's fair and reasonable in the circumstances of this complaint – rather than address every single point that's been made. And with that being the case, while I have read all of PR's submissions in full, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

[2] Specifically Rule 3.6.4 in the Dispute Resolution Rules found in the Financial Conduct Authority's Handbook for Rules and Guidance.

The Supplier's alleged misrepresentations and potential future breach of contract in relation to the Allocated Property

In its response to the provisional decision, PR has linked the concept of "exclusivity" to the existence of a genuine interest in the Allocated Property. This is different to how it put things in the Letter of Complaint, where it said: *"We can only assume that the entire basis of the initial payment is that the membership is, in some way, exclusive. However, this is untrue, given that almost all of the properties can be accessed and booked by non-members."*

PR also says it rejects my conclusion that what the Supplier said about exclusivity, or the end date of the product, was not misrepresentation. It also disagrees with my conclusion that a delay in the sale of the Allocated Property would not necessarily represent a breach of contract, were it to happen in the future.

In my opinion, PR doesn't directly address, in its submissions, what may or may not have actually been said by the Supplier at the Time of Sale on any of the matters I've just referred to. There is still a notable absence of specifics – what was said, in what context, and who said it. And I note Mr and Mrs H have nothing to say about these matters in their witness statement. I see no reason, in light of this, to depart from the conclusions I reached in the provisional decision.

It seems that much of PR's argument in response to the provisional decision centres on what it considers to be a lack of a genuine interest in the Allocated Property being granted to Mr and Mrs H. This position underpins an implied allegation that any representations by the Supplier to the effect that Mr and Mrs H would have an interest in property, must have been false. In general, while I appreciate PR questions the exact legal mechanism used to give prospective purchasers, like Mr and Mrs H, an interest in the allocated properties, that does not change the fact that the shares of members like Mr and Mrs H were clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. So I don't think any representations the Supplier may have made to that effect would have been false.

A substantial part of PR's submissions covers what it considers to be the compromise of any interest Mr and Mrs H have in the Allocated Property, through a charge granted over the property in favour of a commercial lender, apparently securing the financial obligations of a company in the Supplier's group to the commercial lender. I've carefully considered the documents PR has supplied and I can see these are clearly not relevant to Mr and Mrs H's case.

All of the documents and arguments PR has put forward on this point relate to a timeshare provider I will call "C", which is not the Supplier. So the documents don't relate to the Allocated Property in this case, nor do they relate to the Purchase Agreement or even the Supplier in any way. It's unfortunate that PR appears to have confused the Supplier with another timeshare provider, but it should come as no surprise in light of this that I don't think it necessary to address the various arguments PR has made in relation to the alleged compromise of Mr and Mrs H's interest in the Allocated Property. They simply aren't relevant to Mr and Mrs H's circumstances.

More broadly however, if there was a problem with Mr and Mrs H's interest in the Allocated Property which meant that, when the time came, they did not receive the share in the net sale proceeds as promised in their agreement with the Supplier, then this could well be a breach of contract. However, as I mentioned in my provisional decision, any such breach would be in the future and is uncertain. It is not something which I think gives rise to a successful claim against the Lender at this point in time.

The alleged marketing and sale of the Fractional Club membership as an investment, and the impact on Mr and Mrs H's purchasing decision

If the Supplier marketed or sold the Fractional Club membership to Mr and Mrs H as an investment at the Time of Sale, then this would have been a breach of Regulation 14(3) of the Timeshare Regulations. If such a breach had occurred and Mr and Mrs H's purchasing decision had been materially affected by it, then that would be sufficient to draw a conclusion that their credit relationship with the Lender had been rendered unfair to them as a result, warranting compensation.

There appears to be no dispute that the meaning of investment, for the purposes of this case, should be "*a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit*".

I've noted PR's comments about the weight I placed on Mr and Mrs H's witness statement due to certain concerns I had about its provenance, but this was not the only reason why I wasn't persuaded that the Supplier had breached Regulation 14(3) in this specific case.

While PR may argue that it has been alleged, from the beginning of the complaint, that the Supplier sold or marketed the Fractional Club product to Mr and Mrs H as an investment at the Time of Sale, I disagree. It was not something that was mentioned in any way in the initial Letter of Complaint and, despite PR adding to the complaint over the years, the first time this allegation was made was in late 2023. As I observed in the provisional decision, had the product been marketed or sold in the way alleged, and had this been important to Mr and Mrs H's purchasing decision at the Time of Sale, I would have expected this concern to have featured when the complaint was made. PR has suggested it was mentioned in an indirect way, but I don't think there's any way I can interpret the Letter of Complaint as including such an allegation, directly or indirectly.

Second, I noted in the provisional decision that Mr and Mrs H had ticked next to a statement in the Purchase Agreement, which read: *"We understand that…[the product] should not be regarded as a property or financial investment",* and then signed at the bottom of the page. While I acknowledge the paperwork doesn't always tell the full story, I remain of the view that it indicates the Supplier took some steps to avoid selling the product as an investment, and that Mr and Mrs H may well have understood the product was *not* an investment in the sense set out above. Mr and Mrs H don't address in their witness statement, the fact that they signed this declaration which appears to state the opposite of what is now being alleged, nor has PR addressed it in the response to my provisional decision.

Third, I didn't find the content of Mr and Mrs H's witness statement made a persuasive case that the Supplier had described the product in a way which breached Regulation 14(3). The witness statement is just 13 lines long and lacks colour, context and details of what was said, by whom and in what circumstances. While Mr and Mrs H refer to the product being described as an investment, I remain of the view that the words they use do not suggest they understood there was a prospect of a financial gain or profit when the Allocated Property was sold. As I said in the provisional decision:

"[Mr and Mrs H] say only that the Supplier told them it was "a great investment to get involved with" and that they "would receive a share of the sale price". I don't see any allegation that the Supplier said or suggested Mr and Mrs H would get back more than they had paid – only that they would "receive a share". That seems to me to be a factual description of how the Fractional Club product worked. I don't think it's sufficient to show the Supplier breached Regulation 14(3)."

I appreciate PR disagrees with how I've interpreted Mr and Mrs H's words, but I don't think my interpretation is an unreasonable one, and I maintain that Mr and Mrs H's statement doesn't make a persuasive case that the Supplier breached Regulation 14(3) at the Time of Sale, for the reasons already stated.

Finally, while I acknowledge PR has made other arguments on this subject, such as the product's alleged poor value for money for holidays meaning Mr and Mrs H must have bought it as an investment, these arguments don't change my view that the Supplier most likely *did not* breach Regulation 14(3) of the Timeshare Regulations at the Time of Sale.

Irresponsible Lending

PR has repeated its concerns about the Lender's decision to lend to Mr and Mrs H being irresponsible. I said in my provisional decision that evidence of the Credit Agreement being unaffordable to Mr and Mrs H would be required for a complaint to be upheld on this basis. This is because, if the Lender didn't do everything it should have done before agreeing to lend to Mr and Mrs H, it's necessary to show that this led to them being bound to a loan they couldn't afford to repay in a sustainable way. As has been noted already in this decision, a breach of an obligation or rule doesn't automatically lead to compensation.

No new evidence has been put forward to support this point, so I can say no more than that, if the Lender didn't carry out the checks it should have (and I don't have sufficient information to be able to make a finding on that question one way or the other), there's insufficient evidence this led to Mr and Mrs H obtaining a loan they couldn't afford to repay.

Conclusion

Having adopted my provisional findings, and reconsidered the facts and circumstances of this complaint, I still I don't think the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs H's section 75 claim. I'm still not persuaded that the Lender was party to a credit relationship with them 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 for me to direct the Lender to compensate them.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 15 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 essential conclusions as our Investigator, but I've explained my reasons in more detail. Because of this, I'm issuing a provisional decision to allow the parties a further opportunity to make submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is **15 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 H and Mrs H, 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 H'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 H were members of a timeshare provider (the 'Supplier') – having previously purchased products from it. The product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 5 March 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 16,000 fractional points at a cost of £26,880 (the 'Purchase Agreement'). Mr and Mrs H traded in the 15,000 points they already held in the Supplier's 'European Collection', as part of the purchase. After the trade in, the price they had to pay was £11,880.

The points Mr and Mrs H acquired could be exchanged annually for holiday accommodation in the Supplier's portfolio. Fractional Club membership was also asset backed – which meant it gave Mr and Mrs H more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr and Mrs H paid for their Fractional Club membership by taking finance of £11,880 from the Lender (the 'Credit Agreement'). This loan was interest free, and repayable over 36 months at £330 per month. Mr and Mrs H completed their loan repayments in March 2016.

Mr and Mrs H – using a professional representative (the 'PR') – wrote to the Lender on 15 March 2018 (the 'Letter of Complaint') to raise a number of different concerns. Both sides are familiar with them so it isn't necessary to repeat them in detail here beyond the summary above and the table below.

The Lender dealt with Mr and Mrs H's concerns as a complaint and issued its final response letter in November 2018, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. At this stage, some additional complaint points were added by the PR. There was then a significant delay in the Financial Ombudsman Service being able to assess the complaint. In March 2023 we

received further submissions from the PR which focused further concerns on the way the loan had been arranged. And then, in December 2023, we received a final set of submissions from the PR in which it alleged the Fractional Club membership had been sold or marketed to Mr and Mrs H by the Supplier, as an investment. The complaint was then assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

PR, on Mr and Mrs H's behalf, 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. But I would add that the following regulatory rules/guidance are also relevant:

The Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having done that, I do not currently think this complaint should be upheld.

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.

In the interests of efficiency and ease of reading, I have outlined my findings in a table format. Where a particular point has required more detailed explanation or analysis, this follows the table.

But before I set out my findings, I will cover very briefly the general grounds on which Mr and Mrs H seek redress from the Lender in relation to what are, in part, the *Supplier's* alleged wrongdoings as opposed to the Lender's. These grounds are that Mr and Mrs H 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 Mr and Mrs H's case, it means that the credit relationship between them and the Lender can be found to have been 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 Purchase Agreement for the Fractional Club membership) 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 Credit Agreement or any related agreement. Section 56 of the CCA has the effect of making the Supplier the Lender's agent for the purposes of the negotiations leading up to the purchase. So the Supplier's acts or omissions during that process are deemed to be the Lender's responsibility.

Table of Summarised Findings

Section 75 - Misrepresentations	**Reason why this complaint doesn't succeed**
It was falsely represented that buying the product was the only way to exit Mr and Mrs H's existing European Collection membership.	There is insufficient persuasive evidence to be able to conclude the Supplier claimed this to be the case, or that Mr and Mrs H would have been eligible at the Time of Sale to exit their European Collection membership free of charge via other routes.
It was falsely represented that the product had a guaranteed or automatic end date.	There's insufficient persuasive evidence the Supplier claimed this to be the case. The paperwork from the time indicates only that the Allocated Property would be marketed for sale after a certain number of years, and I'm not convinced the Supplier claimed anything different at the Time of Sale.
It was falsely represented that Mr and Mrs H would be members of an exclusive club.	The allegations are somewhat vague and there is insufficient evidence that a specific false statement of fact was made. The Supplier's marketing materials do not say or suggest its resorts could only be used by members, but I understand some membership *benefits* were in fact exclusive to members.
Section 75 - Breaches of Contract	**Reason why this complaint doesn't succeed**

It was possible that the Allocated Property would not be sold at the end of 15 years.	Given the contract does not guarantee the property will be sold on a specific date, a delay in the sale (if this were to happen) would not necessarily be a breach of contract. In any event, such a breach would occur in the future and is, therefore, uncertain.
Matters allegedly rendering the credit relationship unfair	**Reason why this complaint doesn't succeed**
Mr and Mrs H were pressured into making the purchase.	Mr and Mrs H did not use their cooling-off period to cancel the purchase, which I would have expected had they only purchased because they were pressured into doing so. There is also no evidence of what specifically the Supplier said or did which meant they felt they had no choice but to purchase.
The Lender failed to carry out the creditworthiness/affordability checks required by industry guidance or regulations.	No evidence has been provided 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 on the same day as the Purchase Agreement, and the Supplier's representatives were self employed.	It's unclear why or how PR thinks this has caused unfairness in the credit relationship, but it doesn't appear to me that the employment status of the Supplier's representatives could be relevant, and given both the Purchase Agreement and Credit Agreement had cooling off periods, I can't see any immediate reason for the date of the Credit Agreement to be problematic.
The Supplier marketed and sold the membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations.	I'm not convinced the Supplier marketed the product to Mr and Mrs H in this way. If it did, I don't think this was material to Mr and Mrs H's purchasing decision. **See further details below.**
The Lender paid the Supplier an undisclosed commission, and was in breach of a fiduciary duty to Mr and Mrs H.	There was no commission paid in this case, and nothing else about the commission arrangements between the Lender and Supplier would lead me to conclude the complaint ought to be upheld. **See further details below.**

The reasons why I don't think it's likely the Supplier marketed or sold the Fractional Club membership to Mr and Mrs H as an investment, or that this was material to their purchasing decision, are as follows.

The PR did not originally allege that the Supplier had sold or marketed the product in this way

The Letter of Complaint made no mention of the Supplier having marketed or sold the Fractional Club membership to Mr and Mrs H as an investment. This allegation was first made by the PR around five years after the complaint was originally brought to the Lender. It was not made to the Lender, or in any of the further submissions PR made to the Financial

Ombudsman Service between early 2019 and late 2023. If the product had been marketed in this way, or if any prospect of the product being an investment had been significant to Mr and Mrs H, I would have expected it to have featured prominently in these initial submissions, but it doesn't feature at all.

Mr and Mrs H appear to have ticked and signed to say they understood the product was not an investment

Mr and Mrs H signed a declaration at the Time of Sale and ticked against a statement on this declaration which said: *"We understand that…[the product] should not be regarded as a property or financial investment."* While what is committed to writing doesn't always reflect what was said verbally, this indicates to me that a) the Supplier made some efforts not to market or sell the product to Mr and Mrs H as an investment, and b) Mr and Mrs H may well have understood that what they were buying was not meant to be viewed as an investment.

It is not possible to place weight on the witness statement said to have been written by Mr and Mrs H in 2017

I've seen a copy of an undated and unsigned witness statement which the PR says it received from Mr and Mrs H in 2017, and sent to the Financial Ombudsman Service in December 2023. It says it received this as part of a pack of documents from Mr and Mrs H, and that it was sending us the pack because another document within the pack was dated to show when the pack had been received. And indeed, I can see the second document in the pack – which is a copy of part of the Purchase Agreement – has been stamped with "Received 1 Dec 2017". The witness statement is short and focuses only on the Supplier having sold the product to Mr and Mrs H as an investment. None of the concerns made in the original Letter of Complaint or later, appear within the witness statement. This appears, to me, to be an unusual discrepancy. It seems odd that Mr and Mrs H would have given the PR a witness statement in 2017 which focused on the Supplier having sold the Fractional Club product as an investment, and for PR to have then drafted a Letter of Complaint which failed to refer to this, but did refer to many other things Mr and Mrs H *hadn't* referred to.

It's also worth noting that we received a slightly different pack from the PR in February 2019 containing the same document which had been stamped as having been received on 1 December 2017, but without this stamp on it. I find it remarkable that a document stamped on 1 December 2017, could be sent to the Financial Ombudsman Service over a year later, missing this stamp. While there could be an innocent explanation for this discrepancy, in my mind this calls into question the provenance of the witness statement. Given this questionable provenance, lack of consistency with the complaint as originally made, and its very late emergence as a piece of evidence, I am able to place only the most limited amount of weight on it. I do not find it persuasive.

The witness statement does not, in any event, make a compelling case that the Supplier breached Regulation 14(3)

If I could place more weight on the witness statement, I would not find it persuasive enough to demonstrate the Supplier had breached Regulation 14(3). I say this because of how vague it is about how the Supplier's marketing or sales tactics on the day, represented the product to be an investment in the sense agreed in the relevant case law.

The concept of investment, in the sense that would need to be present here, would need to include a hope or expectation of profit or financial gain. This doesn't come across in Mr and Mrs H's statement. They say only that the Supplier told them it was "a great investment to get involved with" and that they "would receive a share of the sale price". I don't see any allegation that the Supplier said or suggested Mr and Mrs H would get back more than they

had paid – only that they would "receive a share". That seems to me to be a factual description of how the Fractional Club product worked. I don't think it's sufficient to show the Supplier breached Regulation 14(3).

Overall, I think there's a lack of evidence to support an argument that there was any improper marketing of the Fractional Club product by the Supplier, in breach of Regulation 14(3) of the Timeshare Regulations, or that this had a material impact on Mr and Mrs H's decision to go ahead with the purchase.

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

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 H 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.

As the Supreme Court said in paragraph 326 of its judgment in *Hopcraft, Johnson and Wrench,* it's not possible to simply apply the reasoning of the Supreme Court in *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61 ('*Plevin*') to this complaint (as the PR does) when it's concerned with a product and marketplace that were very different to those in *Plevin*. What's more, Mr and Mrs H were provided with information as to the price of Fractional Club membership and the cost of the Credit Agreement (interest rate, fees, APR and monthly repayments). So, they were at least in a position from which they could understand the cost of the Credit Agreement and compare it with other options that might have been available at the Time of Sale. As I've mentioned earlier in this decision, there was in fact *no* cost to the Credit Agreement for Mr and Mrs H in this case, as the agreement was interest free.

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 H, 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 H 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 H.

In stark contrast to the facts of Mr Johnson's case, no commission was paid by the Lender to the Supplier for arranging the Credit Agreement. I don't think being told that no commission would be paid was likely to have made any difference to Mr and Mrs H's decision to take the loan on the day. On the contrary, I think they'd have been likely still to go ahead.

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 H 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 H.

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 H 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 H'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 H'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 H (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 H 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.

Overall Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs H's Section 75 claim. I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement and related Purchase Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

My provisional decision

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

Will Culley
Ombudsman