DRN-5153165

The complaint

Mrs D and the estate of Mr D's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably under the Consumer Credit Act 1974 (as amended) (the 'CCA').

What happened

Mrs D and Mr D purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 25 March 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to obtain holiday rights at a specific location ('the Allocated Property') during a specific week, costing 16,883 Euros (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mrs D and Mr D more than just holiday rights. It also included a share in the net sale proceeds of the Allocated Property once the membership term ends in 2030.

As part of the agreement, Mrs D says the Supplier agreed to relinquish Mrs D and Mr D's existing timeshare with a third party.

Mrs D and Mr D paid for their Fractional Club membership by taking finance of £13,000 from the Lender in both their names (the 'Credit Agreement').

Mrs D and Mr D – using a professional representative (the 'PR') – wrote to the Lender on 16 July 2019 (the 'First Letter of Complaint') to complain about the events that happened at the Time of Sale, referring to sections 75 and 75A of the CCA.

In the First Letter of Complaint, the PR said it was making a claim on Mrs and Mr D's behalf under section 75 and 75A of the CCA. The First Letter of Complaint includes the following allegations against the Supplier:

1. That it told Mrs D and Mr D that Fractional Club membership had a guaranteed end date, and they were guaranteed a return on their investment in 2030, or the Supplier would remarket their week once the "Russian Market" opened after a two-year period.
2. That it told them that it would relinquish their existing timeshare, and this would be "virtually impossible" to do without the help of the Supplier.
3. That it told them that Fractional Club membership was an "investment" as the Supplier would arrange for the week to be rented out if they didn't use it, and that this would generate a profit in excess of the maintenance fees payable under the contract.

The PR also said that the Supplier was going into liquidation and so any promises made about rental income or resale would remain unfulfilled.

The Lender dealt with Mrs D and Mr D's concerns as a complaint and issued its final response letter on 16 September 2019, rejecting it on every ground. The PR then sent a follow-up letter to the Lender on 19 September 2019 ('the Second Letter of Complaint'), providing some new information on the complaint/claim. The Lender replied to the PR on 6 February 2020 and reiterated the existing referral rights it had previously given the PR.

Sadly, Mr D passed away in 2022.

Mrs D wrote to the Lender on 2 March 2023 ('the Third Letter of Complaint') and provided more information about the events at the Time of Sale and included some further documents and testimony, which itself is undated. Amongst other things, Mrs D said that she was also promised the relinquishment of another timeshare she and Mr D held with a different supplier.

The PR, on behalf of Mrs D and the estate of Mr D, referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mrs D and the PR 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.

I will refer to and set out several regulatory requirements, legal concepts and guidance in this decision, but I am satisfied that of particular relevance to this complaint is:

- The CCA (including Section 75 and Sections 140A-140C).
- The law on misrepresentation.
- The Timeshare Regulations.
- Case law on Section 140A of the CCA – including, in particular:

    - The Supreme Court's judgment in *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61 ('*Plevin*') (which remains the leading case in this area).
    - *Scotland v British Credit Trust [2014] EWCA Civ 790 ('Scotland and Reast')*
    - *Patel v Patel* [2009] EWHC 3264 (QB) ('*Patel*').
    - The Supreme Court's judgment in *Smith v Royal Bank of Scotland Plc* [2023] UKSC 34 ('*Smith*').
    - *Carney v NM Rothschild & Sons Ltd* [2018] EWHC 958 ('*Carney*').
    - *Kerrigan v Elevate Credit International Ltd* [2020] EWHC 2169 (Comm) ('*Kerrigan*').
    - *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*').

Good industry practice – the RDO Code

The Timeshare Regulations provided a regulatory framework. But as the parties to this complaint already know, I am also required to take into account, when appropriate, what I consider to have been good industry practice at the relevant time – which, in this complaint, includes the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code').

I issued a provisional decision as follows:

"I do not currently think this complaint should be upheld.

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

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

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

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

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mrs D and the estate of Mr D could make against the Supplier.

The PR said in the First Letter of Complaint that Mrs D and Mr D had a claim against the Supplier and, in turn, Lender under Section 75 of the CCA for the following reasons:

1. *Mrs D and Mr D were told by the Supplier that Fractional Club membership had a guaranteed end date, and they were guaranteed a return on their investment in 2030, or the Supplier would remarket their week once the "Russian Market" opened after a two-year period.*
2. *The Supplier told Mrs D and Mr D that Fractional Club membership was an "investment" as the Supplier would arrange for the week to be rented out if they didn't use it, and that this would generate a profit in excess of the maintenance fees payable under the contract.*
3. *The Supplier told Mrs D and Mrs D that it would relinquish their existing timeshare, and this would be "virtually impossible" to do without the help of the Supplier.*

The PR's First Letter of Complaint does not explain why the issues above fall neatly into a claim under Section 75 of the CCA. But, given that the letter ended by saying "our clients were mis-sold, deceived and blatantly lied to by [the Supplier] and therefore wish to make a claim under section 75/75A against [the Lender] for a return of all monies paid", I have interpreted all the events described by the PR in the letter as allegations of misrepresentations whereby promises made by the Supplier were untrue in one way or another.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mrs D and Mr D at the Time of Sale, the Lender is also liable.

The First Allegation

This part of the complaint was made for several reasons that I set out at the start of this decision. They include the allegation in the First Letter of Complaint that Fractional Club membership was sold to Mrs and Mr D as a way to guarantee a profit at the end of the term in 2030, or that they could remarket the membership when the "Russian Market" reopened in two years' time, or, in other words, in 2017.

I've also considered what the PR says in its Second Letter of Complaint to the Lender. It says:

"the whole sales process was aimed at … the opportunity to sell their Fraction in [the Timeshare] either to the Russian Market in 2020 or at the end of the Term in 2030".

Here, the PR has made two very different allegations about what it says the Supplier promised to Mrs D and Mr D about the resale of the Fractional Club membership and/or the Allocated Property. I have thought about both allegations separately and will first look at whether I think the Supplier misrepresented the opportunity to sell the Fractional Club membership on a resale market prior to the end of the term.

In its two letters, the PR has provided two different timeframes for when it says the Supplier promised the resale market would open. If Mrs D and Mr D were told they could resell the Fractional Club membership, and it was important to their decision to enter the Purchase Agreement, I would expect the PR to have been consistent with the year this was promised in its letters, but it has not done this. I also note there is no mention of the "Russian market" or any other resale market in Mrs D's Third Letter of Complaint, and the Supplier has denied this allegation. And, the PR has neither explained why the promise of selling the Fractional Club membership on a resale market was untrue, nor that Mrs and Mr D attempted to, or were interested in, reselling their Timeshare at any stage in their ownership of the Timeshare. Having considered this point, I am not persuaded there was an actionable misrepresentation by the Supplier, as I don't find the allegation to be consistent, plausible, or persuasive.

Regarding the allegation by the PR that the Fractional Club membership was sold as a way to guarantee a profit at the end of the term in 2030, telling prospective members that they were buying a fraction or share of one of the Supplier's properties was not untrue. Indeed, none of the PR's or Mrs D's Letters of Complaint say this was untrue. As this allegation was raised by the PR within the First Letter of Complaint in the context of a claim under Section 75 of the CCA, I've considered whether this might have been untrue. Mrs D and Mr D's share in the Allocated Property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give them that interest, it did not change the fact that they acquired such an interest.

I've also considered what Mrs D says in the testimony provided alongside the Third Letter of Complaint to the Lender dated 2 March 2023. In this she says she and Mr D attended a presentation and she describes the sale in the following terms:

"Included in the purchase price of £13,000 were the maintenance fees for 2016 and 2017, membership to [a third-party company] exchange for three years, the trade-in and relinquishment of ownership of OUR one weeks timeshare, Elm 45, which we owned at [the third-party resort], Scotland. The purchase would be for a period of 15 years (to be resold in 2030) and on resale we would receive monies relating to the appropriate portion of our week"

Mrs D also filled in a "Supplier Dissatisfaction Form" provided by the Lender around the time of her Third Letter of Complaint. In this form, she does not mention any allegations of misrepresentation about the promise of a sale or resale, or of making a profit at the end of the term. So, having considered all the available evidence, I'm not persuaded that the Supplier made the alleged misrepresentation that the Fractional Club membership or the Allocated Property would be guaranteed to sell for a profit at the end of the term.

The Second Allegation

As for the allegation that the Supplier would rent the unused weeks and this would generate a profit, while I recognise that Mrs D has concerns about the way in which the Fractional Club membership was sold to her and Mr D, she and PR have not persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for the other reasons they allege. And I say that because I've looked through the contemporaneous paperwork and this does not appear to give any details of any rental programme offered by the Supplier itself. While PR says the promise of a rental programme turned out to be untrue, neither it nor Mrs D have suggested that she and Mr D tried unsuccessfully to rent their week. PR only suggests that Mrs D found out this might have been untrue through other members who it says only received an amount that covered the annual maintenance fees.

While I accept that Mrs and Mr D may have been told something different during the sales process, I have also considered Mrs D's own testimony, which states:

"We were also informed should we decide not to use our week or bank it with [a third-party company] in any year that we should contact them and they would arrange for it to be rented out on our behalf and any monies received from this would go towards our yearly Maintenance fee and any excess forwarded to us".

Given Mrs D's own testimony does not suggest that she and Mr D were promised the prospect of making a profit from any rental monies received and given the paperwork does not appear to mention a rental programme, I am not persuaded that the Supplier is likely to have made a false statement of existing fact and/or opinion at the Time of Sale about the potential for them to receive a profit through renting their week.

The Third Allegation

I've also thought about the PR's allegation that Mrs and Mr D were promised by the Supplier that they could relinquish their existing timeshare, or as Mrs D's testimony suggests, their two existing timeshares, as part of the membership. But, given this does not appear in the paperwork provided to me, and given the PR's own letter does not explain how the apparent agreement to relinquish the other timeshare(s) was misrepresented to them, or even that it was untrue, I am not persuaded that the Supplier is likely to have made a false statement of fact and/or opinion at the Time of Sale for the reason given in the First Letter of Complaint. As there's nothing else on file that persuades there were any false statements of existing fact made to Mrs D and Mr D by the Supplier at the Time of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reasons alleged.

For these reasons, therefore, I do not think the Lender is liable to pay Mrs D and the estate of Mr D any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

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

I've already summarised how Section 75 of the CCA works and why it gives Mrs D and the estate of Mr D a right of recourse against the Lender. So, it isn't necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

As I have already said, it was said in the First Letter of Complaint that Mrs D and Mr D had discovered that the Supplier was closing down, leaving its promises to them of being able to rent out the right to holiday in a particular week and recouping a profit on the sale of the Allocated Property at the end of the membership term unfulfilled in the future. I can see that certain parts of the Supplier's business were put into administration. And I can understand why PR is alleging that there was a breach of the Purchase Agreement as a result. However, neither Mrs D nor the PR have said, suggested or provided evidence to demonstrate that she is no longer:

1. *A member of the Fractional Club;*
2. *able to use her Fractional Club membership to holiday in the same way she could initially; and*
3. *entitled to a share in the net sales proceeds of the Allocated Property when the Fractional Club membership ends.*

Mrs D also says the apartment was never available to her and Mr D, and that she and Mr D had "a holiday for a few years, never in our apartment". I've considered whether this meant the Supplier may have breached the Purchase Agreement. As I've not been given enough information about the apartment Mrs and Mr D were told they would have holiday rights in, and I've not been given any information about the apartments they did use, I don't agree there's a breach of contract on the part of the Supplier.

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mrs D and the estate of Mr D any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

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

I have already explained why I am not persuaded that the contract entered into by Mrs D and Mr D was misrepresented (or breached) by the Supplier in a way that makes for a successful claim under Section 75 of the CCA and outcome in this complaint. But, as I have said before, PR says that they were told by the Supplier at the Time of Sale that the share in the Allocated Property would be sold in 2030 at the latest – giving them a guaranteed return on their investment, which included what they paid for Fractional Club membership along with a profit.

The Lender does not dispute, and I am satisfied, that Mrs D and Mr D's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling membership of the Fractional Club as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But the PR says that the Supplier did exactly that at the Time of Sale. So, for completeness, that is what I have considered here.

However, as a possible breach of Regulation 14(3) does not fall neatly into a claim under Section 75 of the CCA, I must turn to another provision of the CCA if I am to consider this aspect of the complaint and arrive at a fair and reasonable outcome. And that provision is Section 140A.

Under Section 140A of the CCA, a debtor-creditor relationship can be found to have been or be unfair to the debtor because of one or more of the following: the terms of the credit agreement itself; how the creditor exercised or enforced its rights under the agreement; and any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement) (s.140A(1) CCA). Such a finding may also be based on the terms of any related agreement (which here, includes the Purchase Agreement) and, when combined with Section 56 of the CCA, on anything done or not done by the supplier on the creditor's behalf before the making of the credit agreement or any related agreement.

Section 56 plays an important role in the CCA because it defines the terms "antecedent negotiations" and "negotiator". As a result, it provides a foundation for a number of provisions that follow it. But it also creates a statutory agency in particular circumstances. And while Section 56(1) sets out three of them, the most relevant to this complaint are negotiations conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement.

A debtor-creditor-supplier agreement is defined by Section 12(b) of the CCA as "a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier […]". And Section 11(1)(b) of the CCA says that a restricted-use credit agreement is a regulated credit agreement used to "finance a transaction between the debtor and a person (the 'supplier') other than the creditor […] and "restricted-use credit" shall be construed accordingly."

The Lender doesn't dispute that there was a pre-existing arrangement between it and the Supplier. So, the negotiations conducted by the Supplier during the sale of Mrs and Mr D's membership of the Fractional Club were conducted in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement as defined by Section 12(b). That made them antecedent negotiations under Section 56(1)(c) – which, in turn, meant that they were conducted by the Supplier as an agent for the Lender as per Section 56(2). And such antecedent negotiations were "any other thing done (or not done) by, or on behalf of, the creditor" under s.140(1)(c) CCA.

Antecedent negotiations under Section 56 cover both the acts and omissions of the Supplier, as Lord Sumption made clear in Plevin, at paragraph 31:

"[Section] 56 provides that [when] antecedent negotiations for a debtor-creditor-supplier agreement are conducted by a credit-broker or the supplier, the negotiations are "deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity". The result is that the debtor's statutory rights of withdrawal from prospective agreements, cancellation and rescission may arise on account of the conduct of the negotiator whether or not he was the creditor's agent.' […] Sections 56 and 140A(3) provide for a deemed agency, even in a case where there is no actual one. […] These provisions are there because without them the creditor's responsibility would be engaged only by its own acts or omissions or those of its agents."

And this was recognised by Mrs Justice Collins Rice in Shawbrook & BPF v FOS at paragraph 135:

"By virtue of the deemed agency provision of s.56, therefore, acts or omissions 'by or on behalf of' the bank within s.140A(1)(c) may include acts or omissions of the timeshare company in 'antecedent negotiations' with the consumer".

In the case of Scotland & Reast, the Court of Appeal said, at paragraph 56, that the effect of Section 56(2) of the CCA meant that "negotiations are deemed to have been conducted by the negotiator as agent for the creditor, and that is so irrespective of what the position would have been at common law" before going on to say the following in paragraph 74:

"[...] there is nothing in the wording of s.56(2) to suggest any legislative intent to limit its application so as to exclude s.140A. Moreover, the words in s.140A(1)(c) "any other thing done (or not done) by, or on behalf of, the creditor" are entirely apposite to include antecedent negotiations falling within the scope of s.56(1)(c) and which are deemed by s.56(2) to have been conducted by the supplier as agent of the creditor. Indeed the purpose of s.56(2) is to render the creditor responsible for such statements made by the negotiator and so it seems to me wholly consistent with the scheme of the Act that, where appropriate, they should be taken into account in assessing whether the relationship between the creditor and the debtor is unfair."[1]

So, the Supplier is deemed to be the Lender's statutory agent for the purpose of the pre-contractual negotiations.

However, an assessment of unfairness under Section 140A isn't limited to what happened immediately before or at the time a credit agreement and related agreement were entered into. The High Court held in Patel (which was recently approved by the Supreme Court in the case of Smith), that determining whether or not the relationship complained of was unfair had to be made "having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination" – which was the date of the trial in the case of an existing credit relationship or otherwise the date the credit relationship ended.

The breadth of the unfair relationship test under Section 140A, therefore, is stark. But it isn't a right afforded to a debtor simply because of a breach of a legal or equitable duty. As the Supreme Court said in Plevin (at paragraph 17):

"Section 140A […] does not impose any obligation and is not concerned with the question whether the creditor or anyone else is in breach of a duty. It is concerned with […] whether the creditor's relationship with the debtor was unfair."

Instead, it was said by the Supreme Court in Plevin that the protection afforded to debtors by Section 140A is the consequence of all of the relevant facts.

I have considered the entirety of the credit relationship between Mrs D and Mr D and the Lender along with all of the circumstances of the complaint and I do not think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at all the evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale.

I have then considered the impact of these on the fairness of the credit relationship between Mrs D and Mr D and the Lender.

---

[1] The Court of Appeal's decision in *Scotland* was recently followed in *Smith*.

As I have already said, the PR seems to suggest that the Supplier breached Regulation 14(3) of the Timeshare Regulations. The term "investment" is not defined in the Timeshare Regulations. In Shawbrook & BPF v FOS, the parties agreed that, by reference to the decided authorities, "an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit" at [56]. I will use the same definition.

Mrs D and Mr D's share in the Allocated Property clearly, in my view, constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

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

To conclude, therefore, that Fractional Club membership was marketed or sold to Mrs D and Mr D as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

From the very limited information presented to me, I can see the Supplier did make efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mrs and Mr D, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. For example, the Purchase Agreement only states that Mrs D and Mr D were to "participate proportionally in the net sales proceeds (if any) of the Allocated Property". Mrs D and Mr D also signed a document titled "Declaration of Treating Customers Fairly Sales Practice" which included the statement "[Mrs D and Mr D] agreed that I/we have not entered into this purchase purely for a wider investment opportunity or financial gain".

With that said, I accept that it's possible that Fractional Club membership was marketed and sold to Mrs and Mr D as an investment in breach of Regulation 14(3) given the difficulty the Supplier was likely to have had in presenting a share in the net sales proceeds of the Allocated Property as an important feature of Fractional Club membership without breaching the relevant prohibition.

So, I have taken all of that into account. However, on my reading of the evidence provided and Mrs D's recollections of the sales process at the Time of Sale in her testimony and Third Letter of Complaint, I'm not persuaded that was what is more likely than not to have happened at that time. Mrs D did describe being told by the Supplier that she and Mr D would receive the net sale proceeds of their share in the Allocated Property once their Fractional Club membership ended. But she did not say or suggest that the Supplier led them to believe that their Fractional Club membership would lead to a financial gain (i.e., a profit).

So, while PR argues that the Supplier marketed and sold Fractional Club membership to Mrs D and Mr D as an investment, I don't recognise that assertion in Mrs D's own recollections of the sale. And, given what I've said above about the contents of the Supplier's paperwork and my overall understanding of how it sold its Fractional Club membership, I find

it more likely than not that it did not breach Regulation 14(3) when it sold Mrs D and Mr D their membership at the Time of Sale."

Response to my provisional decision

I asked the parties to provide anything further they wished me to consider by 15 November 2024, explaining that unless the new information changed my mind, the final decision was likely to be along the same lines as the provisional decision.

The Lender responded to confirm it had nothing further to add. Neither the PR nor Mrs D responded.

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.

As neither party has provided me with anything they wished for me to consider, I see no reason to depart from the findings I set out in my provisional decision, which is to say that I don't think the complaint should be upheld.

My final decision

For the reasons I've set out above, I don't think the Lender acted unfairly when it dealt with Mrs D and the estate of Mr D's claims raised under Section 75 of the CCA. And I am not persuaded that it was a party to a credit relationship with them that was unfair for the purposes of section 140A of the CCA. And, having taken everything into account, I see no reason why it would be fair and reasonable to direct the Lender to compensate them. In conclusion, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and the estate of Mr D to accept or reject my decision before 16 December 2024.

Andrew Anderson
Ombudsman