

The complaint

Mrs M'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').

Background to the complaint

Mrs M and her partner, Mr M, purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 13 April 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy the right to occupy a certain apartment during week 19 of every year from 2016 to 2030 (the 'Purchase Agreement'). They ended up paying €17,105.

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

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

Mrs and Mr M – using a professional representative (the 'PR') – wrote to the Lender on 12 June 2019 (the 'Letter of Complaint') to complain about the events that happened at the Time of Sale. The PR says the Supplier said the following during the sale:

- The Supplier would terminate Mrs and Mr M's existing timeshare agreement they held with another timeshare provider.
- The membership they were buying from the supplier would only run until 2030 and the resort would be sold, enabling them to recoup "*some, if not all, of their money*".
- They were told that "*in 2020 the Russian market would open up and that they could sell earlier, if they wished, and were guaranteed to make a profit.*"
- They were told they could expect to make a profit from rental income if they didn't use their weeks.

The PR says that Mrs and Mr M never received any rental income from their unused weeks and that neither this, nor the eventual sale of the resort in 2030 will happen now because the Supplier has ceased trading.

The PR also referred to a Spanish court case that it says shows that "*more than one person has been mis-sold*" by the Supplier.

The Lender dealt with Mrs and Mr M's concerns as a complaint and issued its final response letter on 3 July 2019, rejecting it on every ground.

Mrs and Mr M then 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.

The complaint was later passed to another Investigator who also rejected the complaint.

The PR disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

The PR also provided a copy of some testimony from Mrs M. In this, she shared that Mr M had sadly passed away last year. I am very sorry to hear this news.

The legal and regulatory context

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

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

What I've 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.

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

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

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

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

This part of the complaint was made by the PR as I set out at the start of this decision. Although the PR has not used the word "misrepresentation" in its letter, I have considered what it's said under this provision of Section 75.

While I recognise that Mrs M has concerns about the way in which the Timeshare membership was sold to her and Mr M, she hasn't persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for any of the reasons she alleges.

The two things the PR says the Supplier told Mrs and Mr M that were not true are the promise of rental income from the unused weeks and the sale of the Allocated Property,

either in 2020 or 2030. To me, neither of these appear to be untrue even if such representations had been made by the Supplier (which I make no formal finding on). After all, Mrs M has not told me that she tried to rent her unused weeks, or that she was unsuccessful in doing so. And telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue – nor was it untrue to tell prospective members that they would receive some money when the allocated property is sold. After all, a share in an allocated property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give prospective members that interest, it did not change the fact that they acquired such an interest.

There is no evidence or testimony to support the PR's allegation that Mrs and Mr M were told the "Russian market" would open in 2020 and they could achieve a profit at that time.

What's more, as there's nothing else on file that persuades me there were any false statements of existing fact made to Mrs and Mr M by the Supplier at the Time of Sale, I don't think there was an actionable misrepresentation by the Supplier for the reasons they alleged.

For these reasons, therefore, I do not think the Lender is liable to pay Mrs M 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 M 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.

The PR says in the Letter of Complaint that Mrs M would no longer be able to receive a return because the Supplier had ceased trading.

But, given the lack of evidence to support this allegation, I am not persuaded that there has been a breach of contract here which warrants compensation.

The Supplier says that a third-party trustee is responsible for the sale of the resort after 2030. And this is reflected in the paperwork, and in my understanding of how fractional timeshares operate, so I have seen nothing which could make me think that the sale of the Allocated Property would not proceed in the manner set out in the contractual documentation. My understanding is that the PR assisted Mrs and Mr M with relinquishing their membership, so if this is the case, I would not be surprised if this means that Mrs M will not be able to receive this benefit, or any other benefit from the membership, in the future.

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mrs M 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?

The Lender does not dispute, and I am satisfied, that Mrs and Mr M'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, in the Letter of Complaint, says that the Supplier did exactly that at the Time of Sale. So, that is what I have considered here.

However, as a possible breach of Regulation 14(3) does not fall neatly into a claim under Sections 75 or 75A 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.

I have considered the entirety of the credit relationship between Mrs and Mr M 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 this on the fairness of the credit relationship between Mrs and Mr M and the Lender.

As I have already said, although the PR has not referred to any regulations, in effect it says 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 and Mr M’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 and Mr M 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 evidence 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 M, 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, I've been shown a document titled "*Declaration of Treating Customers Fairly Sales Practice*". This contains the following declarations:

"2. I/We understand that this is a holiday based purchase and I/We believe that meets our future holiday needs that I/We will be able to use and enjoy.

3. My/Our representative [Name] or their Manager [Name] has fully explained how this membership/RCI Weeks product will benefit us in the future.
[...]

5. I/We [Mrs and Mr M] agree that I/We have not entered into this purchase purely for a wider investment opportunity or financial gain.

Following this, there's a section asking how Mrs and Mr M enjoyed the presentation, and they have written: "*Very friendly + informative with no pressure.*"

With that said, I accept that it's possible that Fractional Club membership was marketed and sold to Mrs and Mr M 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.

However, I don't think it's necessary to make a finding on this point because, as I'll go on to explain, I'm not currently persuaded that would make a difference to Mrs M's complaint anyway.

Was the credit relationship between the Lender and Mrs and Mr M rendered unfair?

As the Supreme Court's judgment in *Plevin* makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

I am also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in *Carney* and *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 seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mrs and Mr M and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) which, having taken place during its antecedent negotiations with them, is covered by Section 56 of the CCA, falls within the notion of "any other thing done (or not done) by, or on behalf of, the creditor" for the purposes of 140(1)(c) of the CCA and deemed to be something done by the Lender) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

On my reading of the evidence provided, I'm not persuaded that was what is more likely than not to have happened at the Time of Sale. I'll explain why.

In response to the second Investigator's view, the PR provided a copy of Mrs M's testimony. This is as follows:

"After such a long time since our first contact with [the Supplier] I can only tell you of my recollection of the meeting. My husband passed away last year so I can only use my memory. We were invited to a meeting with a salesman whose name I cannot recall. He did a very time-consuming hard sell, bamboozling us with figures. He insisted that if we were to purchase a week's timeshare the company would buy it back from us at a great profit whenever we wished to relinquish it. He made a great show of demonstrating increasing values which we could expect to receive on the sale. These figures were all written down but not given to us to take away, everything was only verbal. I hope this information is what is required."

The Letter of Complaint provided by the PR does not offer any evidence of what happened at the Time of Sale, and Mrs M's own testimony does not line up with what was said in the Letter of Complaint.

For example, the PR hasn't provided me with any evidence to support the allegation that Mrs and Mr M were told they would receive rental income in the years that they didn't use their week, or that this wasn't provided to them, and Mrs M has not commented on this aspect of her complaint at all.

Mrs M does say that she and Mr M were told they could make a profit by selling the membership back to the Supplier "*whenever we wished to relinquish it*", but I note that the testimony was only provided in response to the Investigator's rejection of the complaint, and only after the outcome of *Shawbrook & BPF v FOS*. What's more, the testimony lacks the necessary colour and context to understand exactly what was said and what Mrs M understood by it. So, I don't think the testimony paints a full picture of what Mrs and Mr M were told by the Supplier at the Time of Sale. And I've not seen sufficient evidence to persuade me that Mrs and Mr M relied on such representations as there's no evidence they tried to sell the membership back to the Supplier at any time.

Given that Mrs and Mr M were at the Supplier's resort on a holiday, I think they were interested in taking holidays, and specifically the type of holidays the Supplier could give them with the exclusive holiday rights they gained through the Purchase Agreement.

I can also see that the Supplier appears to have successfully terminated an existing timeshare agreement Mrs and Mr M held with different timeshare providers. So, I think it's

likely that they were also motivated to enter the Purchase Agreement in order to relinquish their existing timeshare product.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mrs and Mr M's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with the purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mrs and Mr M, and the Lender, was unfair to them even if the Supplier had breached Regulation 14(3).

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 Mrs and Mr M's claims under Section 75, and I am not persuaded that the Lender was party to a credit relationship with Mrs and Mr M under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate Mrs M.

My final decision

For the above reasons, I don't uphold Mrs M's complaint against Shawbrook Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and the estate of Mr M to accept or reject my decision before 19 September 2025.

Andrew Anderson
Ombudsman