

## The complaint

Mr C's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by deciding against paying claims under Section 75 of the Consumer Credit Act 1974 (as amended) (the 'CCA').

## What happened

Mr C was the member of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is his membership of a timeshare that I'll call the 'Fractional Club' – which he bought on 19 June 2014 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 1,700 fractional points at a cost of £4,994 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr C 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 his membership term ends.

Mr C paid for his Fractional Club membership by taking finance of £4,994 from the Lender (the 'Credit Agreement'). This finance was repaid by Mr C on 13 July 2015.

Mr C – using a professional representative (the 'First PR') – wrote to the Lender on 8 October 2018 (the 'Letter of Complaint') to claim *"a full refund under Section 75 of the [CCA] on the grounds of misrepresentations made by the Supplier at the Time of Sale and a breach of contract by it subsequently. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.*

The Lender dealt with Mr C's concerns as a complaint and issued its final response letter on 7 January 2019, rejecting it on every ground.

In January 2019 the First PR referred Mr C's complaint to the Financial Ombudsman Service.

In May 2023 Mr C appointed a new professional representative (the 'Second PR') to represent him.

Mr C's complaint was assessed by an Investigator who, having considered the information on file, rejected it on its merits.

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

## 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'm of the view that this complaint shouldn't be upheld.

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

I would also like to make clear that I'm only considering in this case Mr C's complaint that the Lender acted unfairly and unreasonably by deciding against paying claims under Section 75 of the CCA not any complaint he might have about the Lender being party to an unfair credit relationship with him under Section 140A of the CCA, this having been considered by our Service as a separate complaint under a separate and distinct reference.

### **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.

In the Letter of Complaint the First PR said Mr C was told by the Supplier that Fractional Club membership was an "*investment*".

However, telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties wasn't untrue. After all, a share in an allocated property was, by its very nature, an investment. And while, as I understand it, the sale of the Allocated Property could be postponed in certain circumstances according to the Fractional Club Rules, Mr C says little to nothing to persuade me that he was given a guarantee by the Supplier that the Allocated Property would be sold on a specific date when such a promise would have been impossible to stand by given the inevitable uncertainty of selling property some way into the future.

And as there's nothing else on file to support the First PR's allegation, I'm not persuaded that there was a representation by the Supplier on the issue in question that constituted a false statement of fact.

In a witness statement provided to our service by the Second PR dated 9 March 2022 Mr C says that at the Time of Sale the Supplier advised him that by making the purchase subject to this complaint he would be able to secure "*a higher standard of accommodation*" and holidays in "*member only resorts*".

But Mr C hasn't said how the Supplier represented the quality of accommodation that would be available to him and he hasn't persuaded me that membership was sold to him in such a way that meant that he wasn't aware that third parties could use the same accommodation.

So, while I recognise that Mr C has concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly in relation to this aspect of the complaint.

### **Section 75 of the CCA: the Supplier's Breach of Contract**

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I've already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a 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.

Mr C says that he couldn't holiday where and when he wanted to – which, on my reading of the complaint, suggests that the Supplier wasn't living up to its end of the bargain, potentially breaching the Purchase Agreement.

However, like any holiday accommodation, availability wasn't unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mr C states that the availability of holidays was/is subject to demand. I accept that he may not have been able to take certain holidays. But I've not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I've seen, I don't think the Lender is liable to pay Mr C any compensation for a breach of contract by the Supplier. And with that being the case, I don't think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

### **Conclusion**

In conclusion, given the facts and circumstances of this complaint, I don't think that the Lender acted unfairly or unreasonably in its dealing with Mr C's Section 75 claims. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

### **My final decision**

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 November 2025.

Peter Cook  
**Ombudsman**