

The complaint

Mr and Mrs M's complaint is, in essence, that Shawbrook Bank Limited 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.

Background to the Complaint

Mr and Mrs M purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 21 April 2019 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,380 fractional points at a cost of £21,719 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs M 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 M paid for their Fractional Club membership by taking finance of £21,168 from Shawbrook (the 'Credit Agreement').

Mr and Mrs M – using a professional representative ('PR1') – wrote to Shawbrook on 26 August 2022 (the 'Letter of Complaint') to raise a number of different concerns. 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.

Shawbrook dealt with Mr and Mrs M's concerns as a complaint and issued its final response letter on 21 February 2024, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service, by which time Mr and Mrs M were assisted by a different professional representative ('PR2'). It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mr and Mrs M 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, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add

that the following regulatory rules/guidance are also relevant:

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

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

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

The FCA's Principles

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

- Principle 6
- Principle 7
- Principle 8

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done that, I do not think this complaint should be upheld.

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

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. Shawbrook 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.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs M were:

1. Told that they had purchased an investment that would "considerably appreciate in value" when that was not true.
2. Told that they would own a share in a property that would increase in value during the membership term when that was not true.
3. Told that they could sell their Fractional Club membership back to the Supplier or

- easily to third parties at a profit.
4. Made to believe that they would have access to “the holiday apartment” at any time all year round.

However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). 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. And even if the Supplier’s sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn’t enough evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

As for points 3 and 4, while it’s *possible* that Fractional Club membership was misrepresented at the Time of Sale for one or both of those reasons, I don’t think it’s *probable*. They’re given little to none of the colour or context necessary to demonstrating that the Supplier made false statements of existing fact and/or opinion. The documentation that Mr and Mrs M were given (and signed) at the Time of Sale makes clear, in my view, that they were depositing their Fractional Rights – the rights of exclusive use of the Allocated Property – in exchange for their Fractional Points, to exchange for the booking of other holiday resorts. It also set out the Supplier would not repurchase Fractional Rights. And as there isn’t any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for these reasons, I don’t think it was.

So, while I recognise that Mr and Mrs M and their representatives have 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 Shawbrook acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

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

I’ve already explained why I’m not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I’m to consider this complaint in full – which is what I’ve done next.

Having considered the entirety of the credit relationship between Mr and Mrs M and Shawbrook along with all of the circumstances of the complaint, I don’t 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:

1. The standard of the Supplier’s commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;
3. The commission arrangements between Shawbrook and the Supplier at the Time of Sale and the disclosure of those arrangements;
4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
5. The inherent probabilities of the sale given its circumstances; and, when relevant

6. Any existing unfairness from a related credit agreement.

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

The Supplier's sales & marketing practices at the Time of Sale

Mr and Mrs M's complaint about Shawbrook being party to an unfair credit relationship was made for several reasons.

PR1 said in the Letter of Complaint, for instance, that the right checks weren't carried out before Shawbrook lent to Mr and Mrs M. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that Shawbrook failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs M was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with Shawbrook was unfair to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr and Mrs M.

Connected to this is the suggestion that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that Shawbrook wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr and Mrs M knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for them, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mr and Mrs M suffering a financial loss such that I can say that the credit relationship in question was unfair on them as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell Shawbrook to compensate them, even if the loan wasn't arranged properly.

Overall, therefore, I don't think that Mr and Mrs M's credit relationship with Shawbrook was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why Mr and Mrs M's representatives say the credit relationship with Shawbrook was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

The Supplier's alleged breach of Regulation 14(3) of the Timeshare Regulations

Shawbrook does not dispute, and I am satisfied, that Mr and Mrs 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 Fractional Club membership 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 Mr and Mrs M's representatives say that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mr and Mrs M were told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

The term “investment” is not defined in the Timeshare Regulations. But for the purposes of this decision, and 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.

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs M the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that 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 Mr and Mrs 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.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an ‘investment’ or quantifying to prospective purchasers, such as Mr and Mrs 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.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr and Mrs M as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Would the credit relationship between Shawbrook and Mr and Mrs M have been rendered unfair to them had there been a breach of Regulation 14(3) of the Timeshare Regulations?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr and Mrs M and Shawbrook under the Credit Agreement and related Purchase Agreement as 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.

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs M and Shawbrook that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

To help me decide this point, I've carefully considered what Mr and Mrs M have said in the course of their complaint about how the membership was sold to them and their motivation for purchasing it.

I would note first of all that the evidence in this respect is quite limited. Within the Letter of Complaint, it is said that Mr and Mrs M were told that they had purchased an investment that would increase in value. There was no further detail underpinning these statements within the Letter of Complaint, which are rather generic in nature. In fact, such assertions were made in an identical fashion by PR1 in a number of other complaints.

When referring the complaint to us, PR2 included a statement from Mr and Mrs M with their recollections from the Time of Sale. In response to our Investigator's view, PR2 highlighted that within this statement, Mr and Mrs M said:

"We understood that a fractional ownership meant that we would be buying a percentage of a property.

...

We made the purchase of the fractional ownership based on what we were told by the (Supplier's) representative, that we were investing into a share of a property, and we would not lose out, but gain in the long run. And that we could sell the 3% of the property after 15 years."

I have accepted the possibility that the Supplier positioned the membership as an investment to Mr and Mrs M, an allegation which is supported by the comments cited above. It is largely factual in nature – while not quite accurate, they did acquire an interest in the property (through a share of the net sale proceeds), which they could sell at the end of their membership term.

In order to uphold the complaint, I would need to find that such positioning was material to their decision to purchase the membership. Like our Investigator, I am ultimately not persuaded that it was.

Mr and Mrs M's statement as a whole is brief. And as cited above, the comments relating to the investment element – such as there are – lack much by way of detail to persuade me that this was a matter of significance for Mr and Mrs M.

This may, at least in part, be a consequence of the statement being made some considerable time after the events in question. Mr and Mrs M purchased the membership in 2019 and while the complaint was initially raised in 2022, I understand the statement wasn't made then – but rather some time after the matter was picked up by PR2 in February 2024.

The timing of Mr and Mrs M's statement brings with it a further risk, coming as it did only after the judgment in *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd* and *R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('*Shawbrook & BPF v FOS*') was handed down.

Experience tells me that the more time that passes between a complaint and the event complained about, the more risk there is of recollections being vague, inaccurate and/or influenced by discussion with others. Indeed, as there isn't any other evidence on file to corroborate Mr and Mrs M's very recent evidence about their motivations at the Time of Sale, there seems to me to be a very real risk that their recollections were coloured by the judgment in *Shawbrook & BPF v FOS*. And with that being the case, I'm not persuaded that I can give their written recollections the weight necessary to finding that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

I've also borne in mind that Mr and Mrs M held a trial membership with the Supplier at the Time of Sale, which I consider evidences a pre-existing level of interest in the holiday options offered by the Supplier – and one which would have motivated them to upgrade to a “full” membership product such as the Fractional Club irrespective of any promotion of it as an investment opportunity by the Supplier.

Ultimately then, the limited comments that Mr and Mrs M have made do not persuade me that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when they decided to go ahead with their purchase. That doesn't mean he wasn't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs M themselves don't persuade me that their purchase was motivated by a share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

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 Mr and Mrs 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 their 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 Mr and Mrs M and Shawbrook was unfair to them even if the Supplier had breached Regulation 14(3).

The provision of information by the Supplier at the Time of Sale

PR1 said in the Letter of Complaint that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

As I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

So even if there were one or more unfair contract terms in the Purchase Agreement – upon which I make no finding – I can't see that any such terms were operated unfairly against Mr and Mrs M in practice, nor that any such terms led them to behave in a certain way to their detriment. And with that being the case, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

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 M and Shawbrook under the Credit Agreement and related Purchase Agreement was unfair to them. So I don't think it would be fair or reasonable that I uphold this complaint on that basis.

Overall Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that Shawbrook acted unfairly or unreasonably when it dealt with Mr and Mrs M's Section 75 claim, and I am not persuaded that Shawbrook was party to a credit relationship with them 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 Shawbrook to compensate them.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 18 February 2026.

Ben Jennings
Ombudsman