DRN-5128896

The complaint

Mr R complains Shawbrook Bank Limited (the "Lender") acted unfairly and unreasonably by declining to honour a claim he brought under section 75 of the Consumer Credit Act 1974 ("CCA"), in relation to the purchase of a timeshare product financed by the Lender in March 2015.

What happened

I issued a provisional decision on Mr R's complaint on 22 October 2024, which 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. As a result, it's not necessary for me to go into the events leading up to the complaint again in detail, but very briefly:

- Mr R had purchased a number of timeshare memberships from a company (the "Supplier") between 2009 and 2015. This complaint was about a purchase he'd made in March 2015, which was an upgrade of an existing membership in something called the Fractional Club. The purchase was financed by a loan of £6,733 from the Lender, arranged by the Supplier.

- Mr R complained to the Lender about the purchase in April 2019. The complaint was, broadly-speaking, about misrepresentations and high-pressure sales tactics by the Supplier, which had led to him making the purchase. The complaint was rejected by the Lender and Mr R referred it to the Financial Ombudsman Service.

One of our Investigators recommended the complaint should be upheld. This recommendation was appealed by the Lender and the matter was passed to me to decide.

In my provisional decision I reached a different view to our Investigator. Again, summarising very briefly:

- I thought there were two potential routes via which Mr R might be able to claim redress from the Lender as a result of matters relevant to his March 2015 purchase from the Supplier. These were a claim under Section 75 of the CCA that the Lender was jointly liable with the Supplier for any breach of contract or misrepresentation made by the Supplier; and a claim that the Lender had participated in an unfair debtor-creditor relationship, as per Section 140A of the CCA, as a result of certain wrongs committed by the Supplier on the Lender's behalf.

- In relation to the Section 75 claim, I concluded the Supplier had not misrepresented the Fractional Club product. Some of the things Mr R had said were false statements had in fact been true, while there wasn't enough evidence to indicate other false statements had been made. Regarding the matter of a potential breach of contract, I didn't think Mr R's complaints of a lack of availability of accommodation in the Fractional Club gave rise to a valid claim for breach of contract, and other concerns he'd expressed were about things which may or may not happen in the future, which didn't give him an actionable claim now.

- In relation to the Section 140A claim, I didn't think the high-pressure sale Mr R said the Supplier conducted, was sufficient to render his credit relationship with the Lender unfair. There was a lack of detail on this point, and I noted Mr R had been given a 14 day cooling off period, which he'd not made use of.

  I thought it was possible the Supplier had breached Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the "Timeshare Regulations 2010"), by explicitly or implicitly marketing the Fractional Club product to Mr R as an investment. However, I didn't think that such a breach, if it had happened, had had a *material* impact on Mr R's decision go ahead with the purchase. Because of this, I didn't think it had rendered his credit relationship with the Lender unfair.

So I didn't think the complaint should be upheld. I asked the parties to the case to let me have any further comments by 5 November 2024. The Lender said it didn't have anything to add. Mr R said that he didn't think the provisional decision was very even handed and that it wasn't very clear, but he also didn't think there was anything he could add that would change my mind. He clarified a few points on the phone with our Investigator:

- He accepted that the original complaint to the Lender had used template letters given to him by a company in Tenerife, and which he'd agreed to send. This company had charged him £5,000 and then gone bust. He'd managed to get that money back.

- It had not been inconsistent of him to tell our Investigator he didn't have children, while mentioning having children in his original complaint. This was because he had adult step-children. They had no interest in taking on the Fractional Club membership, and it had ended up being terminated in 2016.

- He had been expecting a return from the Fractional Club product, although investment was perhaps the wrong term to use.

The case has now been returned to me to review once more.

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.

I acknowledge Mr R's comments about the provisional decision, and that it may not have seemed very clear. The legal mechanisms through which Mr R might have been able to claim some compensation from the Lender are unfortunately quite complicated, and it can be difficult to set them out in a way which is concise and clear.

I also accept that, for Mr R, it could be accurate to say that he did have children, or that he didn't have children. Nevertheless, it seems Mr R acknowledges that the original complaint was a template sent to him to use.

Because of this, I don't think it was wrong of me to say in my provisional decision that I thought that the original complaint was less likely to be representative of his concerns about his purchases from the Supplier. I remain of the view that the communication which is *most* likely to be an accurate representation of Mr R's concerns, is the initial phone call he had with our Investigator.

In my provisional decision, I noted that for Mr R to have a claim for redress against the Lender under section 140A of the CCA, the prospect of the Fractional Club membership

being an investment had to play a material part in his decision to buy it.

I've considered Mr R's comments following my provisional decision but they haven't changed my view that, based on what he's previously told us, I think it's unlikely that any prospect of the membership being an investment (i.e. something that would generate a financial return) was something that was *material* to his decision to upgrade his Fractional Club membership in March 2015. And this is for essentially the same reasons I gave in my provisional decision:

- Mr R gave our Investigator various reasons for his dissatisfaction with the Supplier, and these were focused on problems with the availability of holidays and a lack of exclusivity. Mr R didn't mention the product was sold as an investment.

- Mr R told our Investigator the reason he had kept upgrading his membership was to secure better availability of holidays.

- Other than in the template letter, which had been written by someone else for Mr R to send, and in emails sent after our Investigator had issued his assessment, Mr R had never mentioned the product was sold as an investment or that this was something that was important to him or motivated his purchasing decision.

- If the investment aspect of the product had been important to Mr R at the time, I'd have expected him to have mentioned it sooner than he did.

Because I don't think any alleged breach by the Supplier of Regulation 14(3) of the Timeshare Regulations 2010 had a material impact on Mr R's decision to upgrade his Fractional Club membership in March 2015, it follows that I don't think this caused the credit relationship between Mr R and the Lender to be unfair.

The parties to the complaint haven't provided further comment on my other findings, and I see no reason to depart from them. So the rest of my findings remain as stated in my appended provisional decision and summarised above.

My final decision

For the reasons explained above, and in my appended provisional decision, I do not uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 6 December 2024.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at a different set of conclusions to our investigator, so I need to give the parties to the complaint a chance to respond before I make my decision final.

I'll look at any more comments and evidence that I get before 5 November 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mr R complains Shawbrook Bank Limited (the "Lender") acted unfairly and unreasonably by declining to honour a claim he brought under section 75 of the Consumer Credit Act 1974 ("CCA"), in relation to the purchase of a timeshare product financed by the Lender in March 2015[1].

Background to the complaint

Mr R has, over the years, purchased a number of timeshare memberships from a timeshare provider (the "Supplier"). This began with a "Trial" membership in June 2009 which entitled Mr R and his wife (their purchases were made jointly) to several weeks of holidays at an inclusive price, to be taken over a specified period.

This purchase was followed in April 2012 with a purchase of a membership to a particular type of timeshare – the "Fractional Club". Mr R purchased 747 "points" in the Club, and these points renewed each year and could be redeemed against accommodation bookings in the Club's portfolio of properties. This purchase was funded by a loan with a different lender.

Fractional Club membership was asset backed – which meant it gave Mr R more than just holiday rights. It also included a share in the net sale proceeds of a property named on his purchase agreement (the "Allocated Property") after his membership term ends.

I understand Mr R increased the amount of points he held in the Fractional Club the following year, in April 2013, bringing his total to 1,050 points. It appears this purchase was made with cash.

On 2 October 2013 Mr R increased his holding to 1,480 points in the Fractional Club, through a purchase which was financed by a loan with the same lender who'd funded the April 2012 deal.

I'm aware the purchases financed by the other lender have been dealt with by the Financial Ombudsman Service as part of a separate complaint.

This complaint however, concerns the next purchase Mr R made with the Supplier, which was made on 3 March 2015. This involved increasing his points in the Fractional Club to 1,750. Rather than simply "topping up" his points, the purchase was structured as a new membership costing £28,328, with the existing membership of 1,480 points traded in for £22,828, leaving £5,500 to pay.

The Supplier arranged a loan with the Lender to fund this remaining amount, adding to the loan an amount of £1,233 which was still owing on Mr R's most recent loan with the other

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[1] This has been corrected from the original text of the provisional decision, which incorrectly stated the purchase was in February 2015.

lender referred to above. This meant Mr R's loan was for £6,733 in total, repayable over 180 months at £106.71 per month. I understand the loan was settled early, in March 2016.

Mr R brought a complaint to the Lender about his purchase, in April 2019. In his letter, Mr R made the following points:

- The supplier had misrepresented the Fractional Membership to him, persuading him to purchase at a different resort because it would be "much more flexible" and "guaranteed us a return on our investment".
- He had been subjected to hours of high-pressure sales techniques.
- He'd been told the points were an investment he could pass on to his family, when this wasn't true. He didn't believe he'd get any return at all because all the owners of the fractions needed to agree to sell at the same time. The Supplier owned some of the fractions and could block any sale.
- He'd been told the resorts were exclusive to members and had superior, luxurious accommodation, but this turned out not to be true as he'd discovered non-members could book at the same resorts online, which restricted availability. Sometimes there were problems with availability even 2-3 years in advance.
- He wondered what the point had been in buying membership, when he had needed to spend more money each time he booked with the Supplier.
- He had been stuck paying maintenance fees in perpetuity, rising ahead of inflation and meaning he'd leave a big debt to his children.

The Lender dealt with Mr R's concerns as a complaint and issued its final response letter on 20 June 2019, rejecting it on every ground.

Mr R then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, thought it should be upheld. I could summarise his reasons as follows:

- It was likely the Supplier had marketed the Fractional Club membership to Mr R as an investment, which was in contravention of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the "Timeshare Regulations 2010").

- Mr R would not have made the purchase if the Supplier hadn't acted improperly by breaching Regulation 14(3).

- Due to how the relevant laws worked, this had the effect of making the credit relationship between Mr R and the Lender unfair, under section 140A of the CCA, and Mr R should therefore be compensated appropriately.

The Lender disagreed with our Investigator. It said it thought Mr R's testimony was questionable and unclear. It suggested that he had seen the purchase as an investment in holidays, rather than an investment which would generate a financial return. It said that there were notes from the Supplier which indicated the reason Mr R had purchased more points in March 2015 was because he'd used up his allocation and wanted to take more holidays.

The case has now been passed to me to decide.

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.

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.

Before going to analyse the specifics of Mr R's complaint in detail, I think it would be useful to set out how it is that the Lender could potentially be required to provide redress to Mr R, based on his complaint about what the Supplier did (or didn't do). Mr R didn't specify in his complaint the precise legal grounds on which he was seeking redress, but I wouldn't necessarily expect him to be aware of these in detail. The two main avenues via which Mr R could seek redress are through a claim under section 75 of the CCA, or through a complaint about the participation by the Lender in an unfair credit relationship under section 140A of the CCA.

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 Mr R could make against 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 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 Mr R at the Time of Sale, or having been in breach of contract, the Lender is also liable.

The application of section 140A is more complicated. Insofar as is relevant to Mr R's case, it means that the debtor-creditor relationship between him and the Lender can be found to have been unfair because of anything done (or not done) by, or on behalf, of the Lender, before the making of the credit agreement. An unfair debtor-creditor 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 creditor's behalf before the making of the credit agreement or any related agreement. Section 56 has the effect of making the Supplier the Lender's agent for the purposes of the negotiations leading up to the March 2015 purchase. None of this is disputed by the Lender.

However, just because the Supplier may have done something wrong and breached a legal or equitable duty, doesn't necessarily mean that the relationship between Mr R and the Lender will have been rendered unfair. It's important to consider all of the relevant facts before concluding that this is, or was, the case. I will cover this in more detail later, but first I've considered whether or not Mr R had a valid claim against the Lender under Section 75 of the CCA.

Did Mr R have a valid claim against the Lender under Section 75 of the CCA?

I recognise that Mr R has concerns about the way his Fractional Club membership was sold, but I'm not persuaded there was an actionable misrepresentation by the Supplier at the time of the purchase in March 2015 as he alleges, or any subsequent breach of contract.

Mr R says the Fractional Club membership was misrepresented as an investment, but this wasn't true because in order for the Allocated Property to be sold at the end of the membership, all owners of the shares in the property needed to agree to sell it. So there was no guarantee it would be sold, and the membership could continue indefinitely, with Mr R remaining liable for annual management fees, potentially in perpetuity.

I think it's clear that there was an investment element to the Fractional Club membership, in that it involved Mr R acquiring a share in the proceeds of the future sale of a specific apartment. So it would not be a *misrepresentation* for the Supplier to have told him the membership was an investment (although to market the product in this way was prohibited for reasons which will be explained later in this decision).

And while I appreciate Mr R has concerns that the Allocated Property will not be sold when promised, based on my reading of the documents associated with the Fractional Club, it doesn't require the agreement of all the owners for a sale to take place[2], and it appears the property is set to be marketed for sale after a certain number of years. That time has not yet arrived, so any breach of contract will occur in the future, if it occurs at all.

Regarding the lack of exclusivity, meaning non-members were able to stay at resorts included in the Fractional Club portfolio and restrict availability to members, the contemporaneous documents I've seen relating to the membership do not say that the resorts could only be booked by members. Resorts owned by the Supplier are described as "mixed use", while other resorts were described as resorts in which the Supplier had "secured accommodation…under its control" or which were "available through [our] partnerships with other resorts". None of this appears to state or imply that the resorts within the portfolio could only be booked by members. I accept that the Supplier is likely to have promoted various benefits that members could access, such as tailored holiday and cruise booking services, and participation in an exchange programme, and highlighted the quality of its resorts. However, I don't think there's enough evidence for me to conclude it falsely represented that only members could book at its resorts.

[2] Though it appears a sale can be postponed if all members agree.

On the topic of availability more generally, it appears that, as with any holiday accommodation, availability at resorts in the Supplier's portfolio was not unlimited and will have been affected by higher demand at different times of year. Some of the sales paperwork Mr R signed states that the availability of holidays was subject to demand, and it looks like Mr R was able to make use of his fractional points regularly, taking nine weeks of holiday after 3 March 2015; seven weeks and a weekend break using previous fractional points purchases, and six weeks prior to that, under holiday rights acquired through the purchase of non-fractional products. I accept there may have been holidays Mr R wanted to go on, which he was unable to, but I've not seen enough to persuade me that the Supplier breached the purchase agreement for the Fractional Club membership financed by the Lender, and that Mr R therefore has a valid claim against the Lender under Section 75.

Was the relationship between Mr R and the Lender rendered unfair by something the Supplier did or didn't do?

Mr R set out two main concerns which could have made the credit relationship between him and the Lender unfair.

The first of these concerns is that Mr R was subjected to hours of high-pressure selling techniques by the Supplier. I acknowledge that the Supplier's sales process may have been quite lengthy and Mr R may have been somewhat exhausted by the end of this. But he's said little about what was said or done by the Supplier during the sales process that made him feel as if he had no choice but to upgrade his Fractional Club membership when he simply didn't want to. Mr R was given a cooling off period of 14 days and he's not provided an explanation for why he didn't cancel the upgrade during that time. With all this being the case, I think there's insufficient evidence to demonstrate that Mr R made the decision to upgrade his Fractional Club membership in March 2015 because his ability to exercise that choice was significantly reduced by pressure from the Supplier.

The second of the concerns mentioned by Mr R was the suggestion that the Supplier had marketed and sold the Fractional Club membership to him in March 2015 as an investment. To do so would be a breach of Regulation 14(3) of the Timeshare Regulations, as already correctly noted by our Investigator.

Based on what I know about how the Supplier sold and marketed memberships of the Fractional Club at the time Mr R made his purchase, I think it's entirely possible that the Supplier marketed the product to Mr R as an investment, either expressly or implicitly, alongside promoting its holiday-related benefits. This would have been a breach of the regulation above and, if this had a material impact on Mr R's purchasing decision, could have rendered the credit relationship between him and the Lender unfair.

However, I am not convinced that this breach of the Timeshare Regulations *did* have a material impact on Mr R's decision to increase his points in the Fractional Club on 3 March 2015, and for that reason I don't think it had the effect of making the debtor-creditor relationship between Mr R and the Lender unfair. I'll explain further.

There have been four main pieces of testimony to consider from Mr R: we have the complaint he made to the Lender; we have the complaint form he completed when he referred the complaint to the Financial Ombudsman Service; we have a telephone call he had with our Investigator, and we have emails he sent our Investigator after he had received our Investigator's assessment.

As outlined earlier, Mr R did mention in his complaint to the Lender that the Supplier had misrepresented the Fractional Club membership to him as being an investment with a guaranteed return, but that he discovered this wasn't true because all members would need to agree to sell the fractional asset. He made a similar point on his complaint form to this service.

When speaking to our Investigator however, Mr R made no mention of the membership having been marketed to him as an investment, or of him having been motivated to purchase the membership by the prospect of it being one. In fact, the impression I formed, having listened to this phone call, was that Mr R had little interest in the idea of making an investment with the Supplier. For example, Mr R mentioned that in Turkey the Supplier had tried to sell him what he described as a "different concept", which was a kind of investment property. Mr R said that he'd had no interest in this idea, and he didn't make any purchase at that time. Mr R focused in the phone call on other problems he'd had with the Supplier, such as a lack of availability of holidays when and where he wanted them, and his annoyance at discovering non-members were booking up accommodation at what he thought were exclusive resorts. Mr R said the main reason he'd kept upgrading his membership was to secure better availability of holidays.

I think the testimony Mr R gave on the phone call with our Investigator is more likely to be an accurate reflection of his experiences with the Supplier and his motivation for the 3 March 2015 purchase, than the statements he made in his letter of complaint, and his complaint form. The Lender and the Supplier have said or suggested that Mr R's letter of complaint is not an accurate representation of his complaint or of what happened, saying that it looks like a template downloaded from the internet. While I am not sure if Mr R used a template to make his complaint, there is at least one significant inconsistency between his letter of complaint and what he told our Investigator. For example, in his letter of complaint, Mr R said that he was worried about passing on ongoing financial liabilities associated with the timeshare to his children. However, he told our Investigator on the phone, when explaining why he normally booked holidays outside of school holiday periods, that he didn't have any children.

The inconsistencies have meant I've needed to treat the claims made in the letter of complaint and complaint form with some caution. It does seem there's a good chance that they are not truly representative of Mr R's concerns about his purchases from the Supplier, and so I have preferred the testimony Mr R gave our Investigator over the phone.

But what about the emails Mr R sent our Investigator, following his assessment of the complaint? In the first of these emails, Mr R said:

"…when we upgraded so many times the sales pitch was always that we were effectively getting free holidays due to the fact that when the property that was allocated to us was sold we would get our money back due to the increase in property prices at the time of sale."

In the second email, which was responding to the Lender's reasons for disagreeing with the assessment, Mr R said:

"…the whole point of being in a holiday club is to have holidays and to have as many as we could with the points that were allocated to us. The fact is every year we seemed to get less for our points than the year before but instead of sticking with what we had they convinced us to keep upgrading so we could continue having the holidays we wanted and a big part of that was the selling of the property down the line which would give us a return of cash which would cover our outlay which amounted to free holidays for the period we signed up for. That promise and only that promise was [the] main reason for spending more money with [the Supplier]."

Mr R's first email indicates the Supplier marketed, during some of the sales, the Fractional Club product it was selling as an investment. As I've already mentioned in this provisional decision, I think that's possible. However, I must remind myself that this needs to have had a material impact on Mr R's decision to go ahead with the 3 March 2015 purchase.

The second email speaks more to this point, and it's consistent with some aspects of Mr R's phone call with our investigator – in that Mr R mentions the concerns he had about not getting the holiday-related benefits he felt he had paid for, and that getting the holidays he wanted was important to him. Mr R's point about the prospect of getting back his outlay when the property was sold being the main reason for continuing to spend more money with the Supplier, does suggest that the Supplier's possible marketing of the Fractional Club membership as an investment had a material impact on his purchasing decisions. The difficulty I have with this however, it that this is the first time Mr R has mentioned this particular promise by the Supplier, and that it was a significant reason why he went ahead with his various purchases, at all.

I can understand how, on reflection and with our Investigator's analysis of the Supplier's conduct fresh in his mind, Mr R may now recall specific things the Supplier said about the prospect of getting some money back, and have formed an honest view that these were important to his decisions at the time. However, I don't think it's likely these things had a material impact on his decision on 3 March 2015, given what I've said above and because they have not previously formed any part of his expressed concerns about the Supplier. Put simply, if they had been important to him at the time, I think he'd have mentioned them sooner than now.

So, overall, I don't think any breach by the Supplier of Regulation 14(3) of the Timeshare Regulations rendered the credit relationship between Mr R and the Lender unfair for the purposes of Section 140A of the CCA.

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 R's Section 75 claim, and I'm not persuaded that the Lender was party to a credit relationship with him under the credit agreement that was unfair to him 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 him.

My provisional decision

For the reasons explained above, I'm not currently minded to uphold Mr R's complaint.

I now invite the parties to the complaint to let me have any further submissions they'd like me to consider, before 5 November 2024. I will review the case again on or after this date.

Will Culley
Ombudsman