

## **The complaint**

Mr K's complaint is, in essence, that Shawbrook Bank Limited acted unfairly and unreasonably by (1) being party to an unfair credit relationship with him 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 K purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 26 December 2017 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 1,040 fractional points at a cost of £15,430 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr K 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 K paid for his Fractional Club membership by taking finance of £15,430 from Shawbrook (the 'Credit Agreement').

Mr K – using a professional representative ('PR1') – wrote to Shawbrook on 23 June 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 K's concerns as a complaint and issued its final response letter on 7 March 2024, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service, by which time Mr K was 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 K 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 K was:

1. Told that he had purchased an investment that would "considerably appreciate in value".
2. Promised a considerable return on his investment because he was told that he would own a share in a property that would considerably increase in value.

3. Told that he could sell his Fractional Club membership to the Supplier or easily to third parties at a profit.
4. Made to believe that he 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 any accompanying 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. 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 K - and his 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?**

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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 K 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 in relation to Fractional Club membership, 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 K and Shawbrook given his circumstances at the Time of Sale.

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

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

PR1 said, for instance, that the right checks weren't carried out before Shawbrook lent to Mr K. 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 K was actually unaffordable before also concluding that he lost out as a result and then consider whether the credit relationship with Shawbrook was unfair to him for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr K.

Connected to this is the suggestion by PR1 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 K knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for him, 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 a financial loss for Mr K – such that I can say that the credit relationship in question was unfair on him 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 him, even if the loan wasn't arranged properly.

PR1 also said that there was one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Mr K in practice, nor that any such terms led him to behave in a certain way to his detriment, 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.

Overall, therefore, I don't think that Mr K's credit relationship with Shawbrook was rendered unfair to him under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why Mr K's representatives say the credit relationship with Shawbrook was unfair to him. And that's the suggestion that Fractional Club membership was marketed and sold to him 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 K'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 K’s representatives say that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mr K was 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 provisional 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 K the prospect of a financial return – whether or not, like all investments, that was more than what he 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 K 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 him as an investment, i.e. told him or led him to believe that Fractional Club membership offered him 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 K, 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 K 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 K have been rendered unfair to him 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 K 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 K and Shawbrook that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him 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 K has said in the course of his complaint about how the membership was sold to him and her 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 K was told that he 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 K with his recollections from the Time of Sale. In response to our Investigator's view, PR2 highlighted that within his statement, Mr K said:

*"We were told that we can take holidays every year at any of their locations worldwide based on the points we accumulate and also, we have been allocated a certain % of floor space in one of their properties at Tenerife, Spain. At the end of the term of the purchase contract, in our case 15 years we were told that the value of the property (share that we own) would have increased and we could sell it to earn a profit. That % of share in the property will remain as ours and we could also give it as a gift to our children who can then enjoy holidays using the membership."*

Mr K's statement is brief. The comment quoted above is all he had to say regarding the sale itself and he says no more elsewhere about his motivation for purchasing the membership. There is very little by way of detail to corroborate the allegation that the Supplier sold the membership to him as an investment and even less to affirm that the possibility of a financial gain was a decisive factor in his decision to proceed with the purchase. The possibility of a sale (and a profit) of his 'share' are mentioned in broad terms, but so too are the possibilities of retaining and bequeathing it.

Moreover, I note that the statement was only made 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 – and also some two years after the complaint was initially raised. I note that it does not corroborate the majority of the complaint as originally made and instead focuses on the investment element, albeit in the limited way I've described above.

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 K's very recent evidence about his motivations at the Time of Sale, there seems to me to be a very real risk that Mr K's 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 his 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.

Ultimately then, the limited comments that Mr K has made do not persuade me that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when he decided to go ahead with his 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 K himself doesn't persuade me that his purchase was motivated by his 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 he 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 K'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 he would have pressed ahead with his 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 K and Shawbrook was unfair to him even if the Supplier had breached Regulation 14(3).

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

#### **Overall Conclusion**

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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 K's Section 75 claim. I am not persuaded that Shawbrook was party to a credit relationship with him under the Credit Agreement and related Purchase 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 Shawbrook to compensate him.

#### **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 K to accept or reject my decision before 21 January 2026.

Ben Jennings  
**Ombudsman**