

## **The complaint**

Mr and Mrs J'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').

## **What happened**

Mr and Mrs J purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 12 October 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy the right to occupy a certain apartment for one week of every year (apartment 403 week 30) from 2017 to 2030 (the 'Purchase Agreement'). They paid €20,799 for their Fractional Club membership.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs J 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 J paid for their Fractional Club membership by taking finance of £16,165 from the Lender (the 'Credit Agreement').

Mr and Mrs J – using a professional representative (the 'PR') – wrote to the Lender on 19 July 2019 (the 'Letter of Complaint') to complain about the events that happened at the Time of Sale. The PR says the Supplier made the following misrepresentations:

- The Supplier would terminate Mr and Mrs J's existing timeshare agreement they held with another timeshare provider.
- They were guaranteed a return on their investment.
- They were told they could expect to make a profit from rental income if they didn't use their weeks.

The PR says that Mr and Mrs J 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 Lender dealt with Mr and Mrs J's concerns as a complaint and issued its final response letter on 10 October 2019, rejecting it on every ground.

The complaint was then referred 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 Investigators' views**

The Investigator said, in summary that they were not persuaded that there were any actionable misrepresentations by the Supplier at the Time of Sale, nor that the Supplier failed to fulfil one or more of the contractual terms, or that even if it had, there had been no associated financial loss.

The PR disagreed with the Investigator's assessment and asked for an Ombudsman's decision. The complaint was later reassessed by another Investigator with Section 140A of the CCA in mind, but they also didn't think it ought to be upheld. This Investigator said:

*"When considering this complaint, I have looked at the entirety of the credit relationship between Mr and Mrs [J] and the [Lender] along with all of the circumstances of the complaint before coming to my view.*

*As noted above, my colleague considered Mr and Mrs [J]'s complaint under a number of different possible basis of complaint, but did not think that there were any actionable misrepresentations made by the Supplier at the time of sale. In the initial complaint letter, Mr and Mrs [J]'s representative said the following:*

*The supplier positioned membership as an investment, which would have breached Regulation 14(3)<sup>1</sup> because:*

- The Supplier was offering to get Mr and Mrs [J] out of their existing timeshare with another supplier providing they bought a fractional week with the Supplier.*
- The Supplier explained that with the fractional ownership product they were guaranteed a return on their investment.*
- The Supplier told their clients that if they didn't use their week at the resort, the Supplier would rent their week out for at least 1000 Euros, enabling Mr and Mrs [J] not only to be able to pay their annual maintenance fee, but also make a profit.*

*And the Supplier's breach of Regulation 14(3) led to an unfair relationship because:*

- Mr and Mrs [J] took out the membership due to being told that the fractional week could be sold at any time, plus the rental opportunity to make a profit each year, so they thought they were buying an investment. However, Mr and Mrs [J] have now discovered that the Supplier is closing down which means that the rental and resale promises will remain unfulfilled and they are now trapped into an ownership that was sold as an investment.*

#### *Did the Supplier breach Regulation 14(3) of the Timeshare Regulations?*

*I have carefully reviewed every submission that Mr and Mrs [J]'s representative has made. These [are] submissions from Mr and Mrs [J]'s representative in which the representative sets out what Mr and Mrs [J] were supposedly told during the sale and their reasons for entering the contract. I appreciate this information might have been collected during conversations with Mr and Mrs [J]. However, it's important to note that neither our service nor the [Lender] have been provided with first hand testimony from Mr and Mrs [J]. So, it's difficult to substantiate what elements of these letters are from Mr and Mrs [J]'s recollections at the time of sale and what are their representative's submissions. Therefore, I don't have anything from Mr and Mrs [J] that helps me work out what it was they said happened during the sale or the reasons behind their purchase.*

*In addition to the above, having reviewed the available documentation, some of which was signed by Mr and Mrs [J], I note that the Supplier doesn't describe the Membership as an 'investment' or give details of the amount a prospective purchaser, such as Mr and Mrs [J], might expect to get back at the end of the membership term. So the actual evidence I've*

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<sup>1</sup> The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations')

*seen in this case doesn't point to the membership being presented to Mr and Mrs [J] as an investment.*

*Considering all the available information, on balance, I haven't seen sufficient evidence to conclude that the timeshare was marketed or sold to Mr and Mrs [J] as an investment in breach of Regulation 14(3). Or, if there was such a breach, it was such an important and motivating factor in their purchasing decision that it led to an unfair credit relationship.*

### Relinquishment

*In their submissions, Mr and Mrs [J]'s representative say that the Supplier was offering to help get Mr and Mrs [J] out of their existing timeshare membership with another supplier, but this didn't happen.*

*I've reviewed a letter dated 12 October 2015 which has been signed by Mr and Mrs [J]. This letter states that on completion of the purchase agreement with the Supplier, that their Timeshare with the other supplier would be relinquished to the Supplier. I have also seen that Mr and Mrs [J] received a cheque for 1,550 Euros. It appears that this cash back may have been in relation to the relinquishment of their timeshare with their existing supplier.*

*I haven't received any information from Mr and Mrs [J] to dispute that their timeshare with their existing supplier wasn't relinquished to the Supplier in 2015. So, on balance, I'm not persuaded that the Supplier either breached its agreement with Mr and Mrs [J] by failing to get them out of their existing timeshare at the time of sale in 2015.*

### The Supplier's closure

*Mr and Mrs [J]'s representatives have said that the Supplier is closing down, meaning that the rental and resale promises will be unfulfilled. In response, the Supplier disputes that this is the case.*

*I've not seen any evidence that the Supplier is closing down or, if that was the case, that Mr and Mrs [J] would no longer be able to receive something that they are entitled to under their membership – I note that the timeshare properties are legally owned by a third-party trustee, so the membership ought to continue even if the Supplier was no longer running it. It follows, I don't uphold their complaint on this basis.*

### Conclusion

*Given all of the facts and circumstances of this complaint, I don't think the credit relationship between the [Lender] and Mr and Mrs [J] was unfair to them for the purposes of Section 140A. And as I've not seen any other reason to hold the [Lender] responsible for anything that might have gone wrong, I don't think this complaint ought to be upheld."*

### **The PR's response to the second Investigator's view**

The PR did not agree with the second Investigator's view. It said, in summary:

- The original Letter of Complaint was prepared with the full authority of Mr and Mrs J. The content of the complaint is a direct, detailed and factual account, compiled from information and recollections provided by Mr and Mrs J. The complaint should be regarded as their own testimony. A signed statement could be submitted if required.
- There was a breach of Regulation 14(3). The substance and delivery of verbal representations at the point of sale are pivotal for determining mis-selling and regulatory compliance.

- Mr and Mrs J expressly state such representations were made, and these were crucial to their decision to proceed.
- Contractual disclaimers cannot override the real-world impact of high-pressure sales tactics, promises of guaranteed exit, investment returns, or undue financial urgency. Mr and Mrs J's detailed account demonstrates that such factors created an unfair relationship under Section 140A.
- Mr and Mrs J were led to believe the timeshare carried lasting, resaleable value. The true nature of the product, and its implications of default, were not properly and clearly highlighted prior to signing.

The second Investigator considered what had been submitted but it did not change his view that the complaint shouldn't be upheld. He invited both parties to submit any new evidence or arguments that they wished the Ombudsman to consider. Nothing further has been submitted by either the Lender or the PR.

As no agreement was reached, and as the deadline for further submissions has passed, the complaint has come to me for a decision.

### **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. 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.

And having done that, I agree with the findings of both Investigator's, for broadly the same reasons. 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.

I have also made this decision on the balance of probabilities – that is, what I think is most likely to have happened at the relevant time – based on the evidence submitted and the wider circumstances.

### **Section 75 of the CCA: the Supplier's alleged misrepresentations and breach of contract**

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In the Letter of Complaint, the PR alleged that there had been actionable misrepresentations made at the Time of Sale, and that the Supplier had breached the contractual terms of the Purchase Agreement. As such it said that the Lender was unfair in not accepting Mr and Mrs J's claims under Section 75 of the CCA.

These issues were addressed by both Investigators, who did not think the Lender was unfair or unreasonable in the way it dealt with the claims, so they did not think the Lender ought to pay any compensation to Mr and Mrs J in this regard.

No new evidence or arguments were put forward by the PR in response to these complaint points, so I do not think it necessary to consider them further. But for completeness, having considered everything that has been submitted, 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 same reasons as set out by the Investigators, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

I also do not think the Lender is liable to pay Mr and Mrs J any compensation for a breach of contract by the Supplier, for the same reasons as set out by the Investigators. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

### **Section 140A of the CCA: did the Lender 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 or breached 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 J and the Lender 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 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 these on the fairness of the credit relationship between

Mr and Mrs J and the Lender.

### **The Supplier's alleged breach of 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.

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs J 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 J 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.

And 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 J, 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 Letter of Complaint says that the Supplier 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 J 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 the Lender and Mr and Mrs J have been rendered unfair to them had there been a breach of Regulation 14(3) of the Timeshare Regulations?**

I now need to consider what impact any potential breach had on the fairness of the credit relationship between Mr and Mrs J and the Lender 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, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs J and the Lender 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.

But on my reading of the evidence before me, I am simply not persuaded that the prospect of a financial gain from the Fractional Club membership was an important and motivating factor when Mr and Mrs J decided to go ahead with their purchase. I'll explain.

The PR hasn't provided a witness statement from Mr and Mrs J – or anything else that sets out in their own words what happened.

I appreciate that the Letter of Complaint was probably prepared by the PR following a conversation or conversations with Mr and Mrs J, but a letter of complaint (or claim) is not evidence – especially when, as here, it contains bare allegations or a mere summary of the consumer's allegations.

As the second Investigator explained in their view, direct testimony from the consumer, in full and in their own words, is so important in a case like this. It allows the decision-maker to assess credibility and consistency, to know precisely what was supposedly said, and to understand the context in which it was supposedly said. Here, that simply isn't possible. It's also important that the decision-maker can see that the Letter of Complaint genuinely reflects the consumer's testimony. Again, that simply isn't possible in this case. Nothing further has been submitted here, so, in the absence of direct testimony from Mr and Mrs J, I have to rely on the paperwork that has been provided and the circumstances surrounding the sale.

And on my reading of the evidence before me, I do not think the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr and Mrs J decided to go ahead with their purchase.

Given that Mr and Mrs J were at the Supplier's resort on a reduced-cost holiday at the invitation of the Supplier, 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 Mr and Mrs J's existing timeshare agreement they held with a different timeshare provider. And their existing timeshare apparently had a much longer membership term when compared to the Fractional Club. So, I think it's likely that they were also motivated to enter the Purchase Agreement in order to relinquish their existing timeshare product, which it appears was successfully achieved by the Supplier.

That doesn't mean they weren'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 J themselves don't persuade me that their purchase was motivated by their 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 J'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 for the holidays it could provide them, and for the timeshare termination service the Supplier was offering, 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 J and the Lender was unfair to them even if the Supplier had breached Regulation 14(3) of the Timeshare Regulations.

## **Conclusion**

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In conclusion, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with Mr and Mrs J under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate them.

## **My final decision**

I do not uphold this complaint about Shawbrook Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 30 December 2025.

Chris Riggs  
**Ombudsman**