

The complaint

Mr and Mrs F'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 F were existing timeshare members with a timeshare provider (the 'Supplier').

Between October 2014 and October 2016 Mr and Mrs F made three purchases of a timeshare membership (the 'Fractional Club') from the Supplier. Each of these Fractional Club memberships gave them the right to occupy a certain apartment during a certain week each year. The purchases and prices were as follows (hereon in known as the 'Times of Sale'):

- 20 October 2014 - €16,607 (week 47¹ - first occupancy 2015)
- 24 November 2015 - €19,178 (week 40 – first occupancy 2016)
- 6 October 2016 - €15,000 (week 31 - first occupancy 2018)

All three purchases had connected contractual documentation (the 'Purchase Agreement(s)') and were made with the assistance of loans from the Lender in Mr and Mrs F's joint names (the 'Credit Agreement(s)')

Fractional Club membership was asset backed – which meant it gave Mr and Mrs F 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 F – using a professional representative (the 'PR') – wrote to the Lender on 8 May 2019 (the 'Letter of Complaint') to complain about the events that happened at each of the Times of Sale. The PR says the Supplier made the following misrepresentations:

- The Supplier said it would terminate Mr and Mrs F's existing timeshare agreement, which was held in perpetuity.
- The membership(s) they were buying from the Supplier would only run until 2030 and the resort would be sold, enabling them to recoup some, if not all, of their money.
- They were told that in 2020 the Russian market would open up and that they could sell earlier, if they wished, and were guaranteed to make a profit.
- 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 F never received any rental income from their unused weeks and that the sale of their weeks in 2020 and 2030 will not happen now because the Supplier has ceased trading.

¹ This was later changed at no cost to week 41

The PR also referred to a Spanish court case that it says shows that “more than one person has been mis-sold” by the Supplier.

The Lender dealt with Mr and Mrs F’s concerns as a complaint and issued its final response letter on 27 June 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, who 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 F] and the Business along with all of the circumstances of the complaint before coming to my view.

In the initial complaint letter, [Mr and Mrs F]’s representative said the following that might amount to a breach of Regulation 14(3):

- *The Supplier breached Regulation 14(3) because:*
 - *The Supplier told C [sic] [Mr and Mrs F] the resort would be sold by 2030, and [Mr and Mrs F] would recover some, if not all of their money.*
 - *The Supplier advised [Mr and Mrs F] that the Russian market would open in 2020, meaning they could sell at an earlier date with a guaranteed profit.*
 - *The Supplier told [Mr and Mrs F] that it could rent out weeks that [Mr and Mrs F] did not use themselves, to earn a profit of £1,000.*
- *And the Supplier’s breach of Regulation 14(3) led to an unfair credit relationship because:*
 - *[Mr and Mrs F] made three purchases on the grounds that they could be rented out by the Supplier for profit. But since their purchase [Mr and Mrs F] have never had any rental income from their non-use weeks.*
 - *[Mr and Mrs F] have also discovered that the Supplier is closing down, meaning there would be nobody to sell their weeks in 2020 or 2030.*

I’ve also seen that my colleague considered other complaint points raised by [Mr and Mrs F] in their view under the lens of Section 75 of the CCA, but the representatives rejected those findings. Nothing further has been said about those matters and I don’t disagree with my colleague’s findings, so I won’t consider them further.

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

There is competing evidence in this complaint as to whether the Membership was marketed and/or sold by the Supplier to [Mr and Mrs F] as an investment in breach of Regulation 14(3)

of the Timeshare Regulations.

On the one hand, it's clear that the Supplier made efforts to avoid specifically describing membership of the Membership as an 'investment' or giving details of the amount a prospective purchaser, such as [Mr and Mrs F], might expect to get back at the end of their membership term. There were also disclaimers in the sales documents that went some way to saying that the Membership wasn't to be seen by [Mr and Mrs F] as an investment. So, it's possible that the Membership wasn't marketed or sold to them as an investment in breach of Regulation 14(3).

On the other hand, [Mr and Mrs F]'s representatives have made submissions that, due to the things they were told, the Supplier did market the Membership as an investment. I appreciate this information may have been collected during a conversation with [Mr and Mrs F] but, crucially, neither I nor the Business appear to have been provided with [Mr and Mrs F]'s first-hand testimony. So, I don't know the extent to which the letters reflect [Mr and Mrs F]'s recollections. I also don't know precisely what was said or the context in which it was said. Given that, I don't have anything from [Mr and Mrs F] to help me work out what they say happened during the sale or their reasons they took out the Membership.

I have considered the sales documentation, and I acknowledge that some of the wording used within it left open the possibility that the sales representative may have positioned the Membership as an investment. However, 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 F], might expect to get back at the end of the membership term. Further to this, the Supplier confirms it is not responsible for the sale of the weeks at the end of the contractual agreement in 2030, that is the responsibility of First National Trustee Company.

Further to this, there is no reference within the sales documentation of any guaranteed rental program on offer that would guarantee [Mr and Mrs F] returns of in excess of £1,000. Notably the Supplier has confirmed within its own submission that this was not something it offered. It shares [Mr and Mrs F]'s usage history for their weeks, which indicate the weeks were used by [Mr and Mrs F] primarily, with only three examples of non-use. Of the three – one week being banked and one being rented out in 2017. It therefore doesn't appear that any rental programme was something they were primarily interested in at the time.

On balance, without any direct evidence from [Mr and Mrs F], I simply can't say what they were told during the sale. It follows that, I haven't seen sufficient evidence to conclude that the timeshare was marketed or sold to [Mr and Mrs F] 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.

Conclusion

Given all of the facts and circumstances of this complaint, I don't think the credit relationship between the Business and [Mr and Mrs F] was unfair to them for the purposes of Section 140A. And as I've not seen any other reason to hold the Business 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:

- It is incumbent on the Financial Ombudsman Service to obtain evidence it considers necessary for the just resolution of a complaint. The failure to request a detailed account of the sales conversation is a serious procedural deficiency and has denied

them a fair opportunity to have the case properly considered.

- The view gives undue weight to the contract disclaimers, while dismissing oral statements and representations forming the core of the complaint.
- Many previous Ombudsman decisions have upheld complaints regarding the mis-selling of timeshares where promises of future investment value or rental income were made, regardless of documentary disclaimers.
- The decision should be made on the basis of a balance of probability, not by demanding absolute proof.
- In closing down, the Supplier undermines the core sales representation of resale and rental value and frustrates the purpose for which the credit agreements were entered.
- The sales processes breached Regulation 14(3) of the Timeshare Regulations, and thus Section 140A of the CCA applies.
- The Lender is jointly and severally liable pursuant to Section 75.

As no agreement could be reached the matter 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.

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 considered all of the previous ombudsman decisions. But I am considering the merits of this case on its specific circumstances, and I will decide the outcome based on what I think is most likely to have happened – i.e. on the balance of probability.

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

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

In the Letter of Complaint, the PR alleged that there had been actionable misrepresentations made at the Times of Sale, and that the Supplier had breached the contractual terms of the purchase agreements. As such it said that the Lender was unfair in not accepting Mr and Mrs F'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 F in this regard. And having considered everything, I agree that the Lender was not unfair or unreasonable when it did not accept these Section 75 claims.

Mr and Mrs F (and/or the PR) have not provided any evidence to support the allegations relating to the misrepresentations said to have been made by the Supplier at the Times of Sale, nor is there anything in any of the contractual documentation or other paperwork which does so. So I am simply not persuaded that the alleged misrepresentations were made. 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 F any compensation for a breach of contract by the Supplier, for the same reasons as set out by the Investigators. Neither Mr and Mrs F nor the PR have said, suggested or provided evidence to demonstrate that they are no longer:

1. Members of the Fractional Club;
2. Able to use their Fractional Club memberships to holiday in the same way they could initially; and
3. Entitled to a share in the net sales proceeds of the relevant Allocated Property(s) when their Fractional Club membership ends.

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 unfair credit relationships?

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Times of Sale, or that the contracts were breached. 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 relationships between Mr and Mrs F and the Lender along with all of the circumstances of the complaint, I don't think the credit relationships between them were 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 Times of Sale.

I have then considered the impact of these on the fairness of the credit relationships

between Mr and Mrs F and the Lender.

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

As I have already said, although the PR has not referred to any regulations in the Letter of Complaint, in effect it says that the Supplier breached 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(s) clearly constituted an investment as it offered Mr and Mrs F 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 any or all of the Fractional Club memberships were marketed or sold to Mr and Mrs F 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 as the second Investigator said, there is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Times 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 F, the financial value of their share in the net sales proceeds of the Allocated property(s) 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 the Fractional Club memberships were marketed and sold to Mr and Mrs F as investments in breach of Regulation 14(3).

In response to the second Investigator's view, the PR said that a breach of Regulation 14(3) by the Supplier meant Section 140A of the CCA and an unfair credit relationship applied. But the PR seems to be mistaken here. 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 whether there was a breach of Regulation 14(3) at the Times of Sale for the purposes of this decision.

Were the credit relationships between the Lender and the Consumer rendered unfair?

I now need to consider what impact any potential breaches had on the fairness of the credit relationships between Mr and Mrs F and the Lender under the credit agreements and related purchase agreements. This is because 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) at any of the Times of Sale led to one or more of the credit relationships between Mr and Mrs F and the Lender that were unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the particular purchase agreement and the associated credit agreement is an important consideration.

Regrettably, the PR hasn't provided a witness statement from Mr and Mrs F – 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 F, 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 said, 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. So, in the absence of direct testimony from Mr and Mrs F, I have to rely on the paperwork that has been provided.

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 F decided to go ahead with their purchase. I am simply not persuaded that was the case. I acknowledge the Letter of Complaint says that they could expect to recoup "some, if not all, of their money", but this to me does not suggest that they were told to expect a profit. And there is no evidence to support the allegation made in the Letter of Complaint regarding the "Russian Market" and a potential profit in 2020, nor is there any evidence to suggest that Mr and Mrs F were interested in selling their timeshare at that time.

Given that Mr and Mrs F were existing timeshare members, 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 agreements. I can also see that the Supplier terminated Mr and Mrs F's existing timeshare agreement, transferring them on to the fractional membership at the first sale in October 2014. So, I think it's likely that they were also motivated to enter that first purchase agreement in order to relinquish their existing timeshare product.

That doesn't mean they weren't interested in a share in the Allocated Property(s) - after all, that wouldn't be surprising given the nature of the products at the centre of this complaint. But as Mr and Mrs F themselves don't persuade me that their purchases were motivated by their share in the Allocated Property(s) and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier at any of the Times of Sale was likely to have been material to the purchasing decisions they ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club memberships as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs F's decisions to purchase the Fractional Club memberships at the Times of Sale were 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 purchases for the holidays they could provide them, and for the timeshare termination service the Supplier offered at the first sale, whether or not there had been a breach of Regulation 14(3).

And for that reason, I do not think the credit relationships between Mr and Mrs F and the Lender were unfair to them even if the Supplier had breached Regulation 14(3).

Conclusion

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 F under any of the credit agreements 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 Ms F and Mr F to accept or reject my decision before 25 September 2025.

Chris Riggs
Ombudsman