

## **The complaint**

Mr and Mrs C's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

## **What happened**

Mr and Mrs C purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 6 October 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 900 fractional points at a cost of £14,533 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs C more than just holiday rights. It also included a share in the net sale proceeds of a property named on their Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr and Mrs C paid for their Fractional Club membership by taking finance of £14,533 from the Lender in both of their names (the 'Credit Agreement'). The loan was settled on 5 April 2016.

Mr and Mrs C also went on to upgrade their membership in January 2016, but that purchase is being dealt with in a separate complaint as the loan taken out to fund that purchase was only in Mrs C's sole name.

Mr and Mrs C – using a professional representative (the 'PR') – wrote to the Lender on 25 January 2021 (the 'Letter of Complaint') to complain about:

1. A misrepresentation by the Supplier at the Time of Sale giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.

### (1) Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

Mr and Mrs C say that the Supplier made a pre-contractual misrepresentation at the Time of Sale – namely that the Supplier told them that Fractional Club membership was an "investment" when that was not true.

Mr and Mrs C say that they have a claim against the Supplier in respect of the misrepresentation set out above, and therefore, under Section 75 of the CCA, they have a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr and Mrs C.

## (2) Section 140A of the CCA: the Lender's participation in an unfair credit relationship

The Letter of Complaint set out several reasons why Mr and Mrs C say that the credit relationship between them and the Lender was unfair to them under Section 140A of the CCA. In summary, they include the following:

1. The terms of the agreement were unfair in themselves as the Lender paid the Supplier commission and this was not disclosed to Mr and Mrs C.
2. Fractional Club membership was marketed and sold to them as an investment in breach of regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').
3. They were pressured into purchasing Fractional Club membership by the Supplier.
4. The decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness assessment. Mr and Mrs C also weren't given a choice of creditor or the opportunity to arrange their own finance.

The Lender dealt with Mr and Mrs C's concerns as a complaint and issued its final response letter on 30 March 2021, rejecting it on every ground.

The PR, on Mr and Mrs C's behalf, then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

The Lender disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I considered the matter and issued a provisional decision (the 'PD'). In that decision, I said:

### **"Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale**

*As both sides may already know, a claim against the Lender under Section 75 essentially mirrors the claim Mr and Mrs C could make against the Supplier. Certain conditions must be met if this protection is engaged – which are set out in the CCA. The Lender does not dispute that the relevant conditions are met in this complaint and I'm satisfied that they are.*

*Here, Mr and Mrs C say the Supplier told them the Fractional Club membership was an investment when that was not true. Reading the Letter of Complaint and Mr and Mrs C's testimony, beyond the bare allegation, they provide little evidence to support it such as what exactly they were told in this regard, by whom and in what context. But in any event, for reasons I'll come on to below, Mr and Mrs C's membership plainly did have an investment element to it. So, such a statement, if made, would not have been untrue.*

*So, while I recognise that Mr and Mrs C have concerns about the way in which their Fractional Club membership was sold, they have not persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for the reason they've alleged.*

*What's more, as there's nothing else on file that persuades me there were any false statements of existing fact made to Mr and Mrs C by the Supplier at the Time of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reason(s) they've alleged.*

*For these reasons, therefore, I do not think the Lender is liable to pay Mr and Mrs C any compensation for the alleged misrepresentation(s) of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.*

### **Section 140A of the CCA: did the Lender participate in an unfair credit relationship?**

*I have already explained why I am not persuaded that the contract entered into by Mr and Mrs C was misrepresented (or breached) by the Supplier in a way that makes for a successful claim under Section 75 of the CCA and outcome in this complaint. But Mr and Mrs C also say that the credit relationship between them and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time of Sale that they have concerns about. It is those concerns that I explore here.*

*I have considered the entirety of the credit relationship between Mr and Mrs C and the Lender along with all of the circumstances of the complaint and I do not 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 Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale; and*
- 2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
- 3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;*
- 4. The inherent probabilities of the sale given its circumstances.*

*I have then considered the impact of these on the fairness of the credit relationship between Mr and Mrs C and the Lender.*

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

*Mr and Mrs C's complaint about the Lender being party to an unfair credit relationship was also made for several reasons, all of which I set out at the start of this decision.*

*The PR says that the right checks weren't carried out before the Lender lent to Mr and Mrs C. 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 the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs C was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair to them for this reason. Again, from the information provided, I am not satisfied that the lending was unaffordable for Mr and Mrs C. If there is any further information on this (or any other points raised in this provisional decision) that Mr and Mrs C wish to provide, I would invite them to do so in response to this provisional decision.*

*The PR has also said that Mr and Mrs C weren't given a choice of creditor or the opportunity to arrange their own finance. I haven't seen that the Supplier was acting in an advisory capacity here to Mr and Mrs C. And, I can see the Lender has explained that two loan applications were completed at the Time of Sale, one which Mr and Mrs C ultimately chose to go ahead with and also one for another lender. I also can't see that Mr and Mrs C were prevented from arranging their own payment for the membership if they had wished to. But*

*in any event, the PR hasn't explained why the points they've raised here made the credit relationship unfair in this particular case.*

*Mr and Mrs C say that they were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale. I acknowledge that they may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. Moreover, they did go on to upgrade their Fractional Club membership – which I find difficult to understand if the reason they went ahead with the purchase in question was because they were pressured into it. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs C made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.*

*I'm not persuaded, therefore, that Mr and Mrs C's credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why they say their credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.*

*Was Fractional Club membership marketed and sold at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations?*

*The Lender does not dispute, and I am satisfied, that Mr and Mrs C'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 membership of the Fractional Club 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 PR says that the Supplier did exactly that at the Time of Sale. So, that is what I have considered next.*

*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.*

*Mr and Mrs C's share in the Allocated Property clearly, in my view, constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But 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 C as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.*

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

*On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs C, 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. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr and Mrs C as an investment. So, it's possible that Fractional Club membership wasn't marketed or sold to them as an investment in breach of Regulation 14(3).*

*On the other hand, I acknowledge that the Supplier's training material left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr and Mrs C 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 is not necessary to make a formal finding on that particular issue for the purposes of this decision.*

*Was the credit relationship between the Lender and Mr and Mrs C rendered unfair to them?*

*As the Supreme Court's judgment in Plevin makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.*

*And in light of what the courts had to say in Carney and Kerrigan, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs C 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.*

*Mr and Mrs C have provided a witness statement which is not signed but is dated 8 October 2020. In this statement, they have said:*

*"We went on this holiday in Malaga and were invited to a meeting that lasted 3 or 4 hours where the representatives advised that the resorts were exclusive to members and that we would have excellent availability to holidays in worldwide resorts.*

*We were advised that this was an investment where we would get our money back plus a profit if we purchased property.*

*[...]*

*We have struggled with availability for our chosen holidays and have had to incur extra cost to book a holiday.”*

*What they have said here is extremely light on detail as to how exactly membership was sold to them, including what exactly they were told, by whom and in what context. So, while, as I've said above, I acknowledge it's possible based on what they've said here that Fractional Club membership was marketed and sold to them as an investment, that is not enough, on its own, for me to uphold this complaint. I also need to be persuaded that Mr and Mrs C were motivated to purchase the Fractional Club membership due to the prospect of a financial gain. And I'm not persuaded from what they've said that they were induced into the purchase on that basis – there isn't sufficient evidence of that in what they've had to say. Indeed, from their testimony, their emphasis seems to be on how the membership functioned as a holiday product.*

*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 C's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr and Mrs C and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).*

### **Mr and Mrs C's Commission Complaint**

*I note that one of Mr and Mrs C's other concerns relates to alleged payment of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. The Supreme Court's recent judgment *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('*Johnson, Wrench and Hopcraft*') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer–credit brokers. At present, I do not know enough about the relevant arrangements in place at the Time of Sale. So, once I know more, I will finalise my findings on this complaint.”*

In conclusion, I did not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim, and if I put the issue of commission to one side for the time being, I was not persuaded that the Lender was party to a credit relationship with Mr and Mrs C under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA – nor did I see any other reason why it would be fair or reasonable to direct the Lender to compensate them.

Following my provisional decision, I also communicated to both parties how I was not persuaded that Mr and Mrs C's credit relationship with the Lender was unfair to them for reasons relating to the commission arrangements between it and the Supplier<sup>1</sup>.

The Lender responded to the PD and accepted it. The PR also responded – they did not accept the PD and provided some further comments and evidence they wish to be considered.

Having received the relevant responses from both parties, I'm now finalising my decision.

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<sup>1</sup> The Lender did not respond to this communication. The PR did respond but confirmed they did not wish to challenge the conclusion I reached on this particular point.

## **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.

Following the responses from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the PD in the main relate to the issue of whether the credit relationship between Mr and Mrs C and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr and Mrs C as an investment at the Time of Sale. They've also reiterated that in their view, the decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness assessment.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But they didn't make any further comments in relation to those in

their response to my PD. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on the PR's points raised in response.

### **Section 140A of the CCA: did the Lender participate in an unfair credit relationship?**

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

Included in the PR's response to my PD was an offer to have Mr and Mrs C provide a sworn affidavit. But I must remind them that we don't have strict evidential requirements. We aren't expected to decide complaints only after receiving sworn evidence. And our jurisdiction is investigative rather than adversarial. I remain of the view that the information we have on file is enough to cover all the issues I need to consider to reach a fair decision. And as I've considered everything on file, including the specific points raised by the PR as part of its request, I'm of the view that a sworn affidavit isn't required.

As I explained in my PD, considering Mr and Mrs C's testimony, I acknowledged it was possible that the Supplier marketed or sold the Fractional Club membership to them as an investment. But I explained that that is not enough, on its own, for me to uphold this complaint. I explained I also need to be persuaded that Mr and Mrs C were motivated to purchase the Fractional Club membership due to the prospect of a financial gain. And I wasn't persuaded from what they've said that they were induced into the purchase on that basis as there simply wasn't sufficient evidence of that in what they've had to say. Indeed, in my view, their emphasis seemed to be on how the membership functioned as a holiday product.

So, I wasn't persuaded that the evidence suggested that Mr and Mrs C purchased Fractional Club membership in whole or in part down to any breach of Regulation 14(3).

Here, the PR has stated that I've been inconsistent with my approach compared to previous decisions issued by the Service and has provided examples it feels demonstrates this. But my decision is based on consideration of Mr and Mrs C's specific circumstances. Each complaint turns on its own facts; an ombudsman's decision on how one timeshare sale occurred does not determine his, or any other ombudsman's, decisions about the facts of other sales at different times to different purchases.

I accept that within the PR's new submissions Mrs C has provided further evidence, stating they thought the membership would be a good way of having holidays. She's also described how they've been very stressed by the situation they now find themselves in and explained how this has affected their health. I'm sorry to hear about the personal circumstances Mrs C has described, but I do note that here, she has indicated they purchased the membership for holidays (with no mention of the investment element or purchasing it for that reason). So, I think this only reinforces what I've already said on this point in my PD.

So, ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr and Mrs C's purchasing decision.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr and Mrs C's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mr and Mrs C and the Lender was unfair to them for this reason.

## **Other points**

The PR has reiterated that in their view, the right checks weren't carried out before the Lender lent to Mr and Mrs C.

I still haven't seen anything to persuade me that was the case in this complaint given its circumstances. But as I already explained in my PD, even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I still make no such finding), I would have to be satisfied that the money lent to Mr and Mrs C was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair to them for this reason. No further specific information was provided in relation to this point in response to the PD. So again, I am not satisfied that the lending was unaffordable for Mr and Mrs C.

## **Conclusion**

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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 and Mrs C's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

## **My final decision**

For the reasons set out above, I don't uphold this complaint.

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

Fiona Mallinson  
**Ombudsman**