

## **The complaint**

Mrs D'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 her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying claims under Section 75 of the CCA.

## **What happened**

Mrs D was the member of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is her membership of a timeshare that I'll call the 'Fractional Club' – which she bought on 21 January 2015 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 8,000 fractional points at a cost of £5,000 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mrs D 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 her membership term ends.

Mrs D paid for her Fractional Club membership by taking finance of £5,000 from the Lender (the 'Credit Agreement').

Mrs D – using a professional representative (the 'PR') – wrote to the Lender on 28 April 2020 (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.

The Lender dealt with Mrs D's concerns as a complaint and issued its final response letter on 11 February 2021, 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.

Mrs D 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') on 7 October 2025. In that decision, I said:

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 don't currently think this complaint should be upheld.

However, before I explain why, I want to make it clear that my role as an Ombudsman isn't to address every single point that has been made to date. Instead, it's to decide what's fair and reasonable in the circumstances of this complaint. So, if I haven't commented on, or referred to, something that either party has said, that doesn't mean I haven't 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. 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.

The PR submits that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mrs D was:

- 1) told by the Supplier that Fractional Club membership had a guaranteed end date when that wasn't true.
- 2) told by the Supplier that Fractional Club membership was an "investment" when that wasn't true.

However, telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties wasn't untrue. After all, a share in an allocated property was, by its very nature, an investment. And while, as I understand it, the sale of the Allocated Property could be postponed in certain circumstances according to the Fractional Club Rules, Mrs D says little to nothing to persuade me that she was given a guarantee by the Supplier that the Allocated Property would be sold on a specific date when such a promise would have been impossible to stand by given the inevitable uncertainty of selling property some way into the future. And as there's nothing else on file to support the PR's allegation, I'm not persuaded that there was a representation by the Supplier on the issue in question that constituted a false statement of fact.

So, while I recognise that Mrs D and the PR 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 the Lender acted unreasonably or unfairly in this respect.

### **Section 75 of the CCA: the Supplier's Breach of Contract**

I've already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it isn't necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mrs D says that she couldn't holiday where and when she wanted to – which, on my reading of the complaint, suggests that the Supplier wasn't living up to its end of the bargain, potentially breaching the Purchase Agreement.

Yet, like any holiday accommodation, availability wasn't unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mrs D states that the availability of holidays was/is subject to demand. It also looks like she made use of her fractional points to holiday on a number of occasions. I accept that she may not have been able to take certain holidays. But I haven't seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I've seen, I don't think the Lender is liable to pay Mrs D any compensation for a breach of contract by the Supplier. And with that being the case, I don't think the Lender acted unfairly or unreasonably in this respect.

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

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 Mrs D 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've 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, 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; and, when relevant
5. Any existing unfairness from a related credit agreement.

I've then considered the impact of these on the fairness of the credit relationship between Mrs D and the Lender.

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

Mrs D's complaint about the Lender being party to an unfair credit relationship was and is made for several reasons.

The PR says, for instance that:

1. the right checks weren't carried out before the Lender lent to Mrs D; and
2. Mrs D was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.

However, as things currently stand, neither of these strike me as reasons why this complaint should succeed.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's 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 Mrs D was actually unaffordable, before also concluding that she lost out as a result, and then consider whether the credit relationship with the Lender was unfair to her for this reason. But from the information provided, I'm not satisfied that the lending was unaffordable for Mrs D.

I acknowledge that Mrs D may have felt weary after a sales process that went on for a long time. But she says little about what was said and/or done by the Supplier during the sales presentation that made her feel as if she had no choice but to purchase Fractional Club membership when she simply didn't want to. She was also given a 14-day cooling off period and she hasn't provided a credible explanation for why she didn't cancel her membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mrs D made the decision to purchase Fractional Club membership because her ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mrs D's credit relationship with the Lender was rendered unfair to her under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR now says the credit relationship with the Lender was unfair to her. And that's the suggestion that Fractional Club membership was marketed and sold to her 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**

A share in the Allocated Property clearly constituted an investment as it offered Mrs D the prospect of a financial return – whether or not, like all investments, it was more than what she first put into it. But it's important to note at this stage that the fact that Fractional Club membership included an investment element didn't, 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 didn't 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 Mrs D as an investment in breach of Regulation 14(3), I've to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her 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's 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 Mrs D, the financial value of her 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 Mrs D as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier isn't ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it isn't necessary to make a formal finding on that particular issue for the purposes of this decision.

### **Was the credit relationship between the Lender and the Consumer rendered unfair?**

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 Mrs D and the Lender under the Credit Agreement and related Purchase Agreement, as the case law on Section 140A makes it clear that regulatory breaches don't 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'm to conclude that a breach of Regulation 14(3) led to a credit relationship between Mrs D and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership wasn't an important and motivating factor when Mrs D decided to go ahead with her purchase. I say that having read and considered Mrs D's testimony.

This was compiled by the PR and dated 21 August 2019.

The testimony sets out Mrs D's recollections of her entire relationship with the Supplier. As regards her purchase of the Fractional Club at the Time of Sale Mrs D says:

*"2015 I was on holiday.... I was invited to a welcome meeting. The representatives advised that there were now fractional points now available with [a particular] resort with wonderful facilities. The representatives advised that this property would sell exceptionally well due to the fantastic facilities. I had some [existing] points, and this is when I decided that as this sounded as if this property would sell easily to purchase more points. I also want to have all my points into fractions as I had been advised that this was a guaranteed exit from my timeshare contract and that my family would not inherit my timeshare product."*

On my reading of the above Mrs D's decision to purchase was motivated by what she understood was "a guaranteed exit date" and her understanding that her "family would not inherit [her] timeshare" rather than the prospect of a financial gain (i.e., a profit).

This doesn't mean that Mrs D 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 I've said, I don't think this was a motivation for her.

Furthermore I think that a further motivating factor for Mrs D to enter into the membership was the type, quality and exclusivity of holidays that she understood membership would allow her to take given that in her testimony she goes on to say:

“ ...

*I did not have any problems with availability prior to Diamond taking over the contract however, I did have to book at least 12 months in advance.*

*I have now experienced that the resorts are not exclusive. As a...member I had unsuccessfully attempted 2 or 3 times to book a particular apartment in a particular resort. I did manage to book the apartment next to it on one occasion only to find out that it had been rented out to a hen party with ladies who were not members.*

*Last year while around the pool a Spanish family who were not members were in the resort and were noisy and disruptive to the point where a disabled person had to come out of the pool due to the antics of this family.*

*I understand that fees are for the upkeep the resort, but these have gone up considerably. Additionally, non-members don't pay fees but have the same holidays.*

...”

So as Mrs D doesn't persuade me that her purchase was motivated by her 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 she ultimately made.

I'm aware that the PR has provided our service with supplementary testimony compiled by it and dated 9 February 2024 in which Mrs D says, in summary, that although she didn't say so in her original testimony (because she didn't think she was required to do so) she made her purchase of the Fractional Club at the Time of Sale because she was under the impression that she would see a return on the Allocated Property's sale in line with what she had been advised by the Supplier in respect of two earlier purchases she had made and which aren't subject to this complaint.

But given:

- This supplementary testimony was provided to our Service more than nine years after the events in question.
- Despite what Mrs D says to the contrary, had a return on the Allocated Property been a motivating factor in her purchase decision I might have expected her to say so in her original testimony.
- This supplementary testimony was provided after the ruling in *Shawbrook & BPF v FOS* and after the Investigator rejected Mrs D's complaint on its merits.

I'm not persuaded I can attach much weight to it, if any.

I would also add that Mrs D doesn't say in this supplementary testimony that she was told that she would see a return on the Allocated Property's sale but rather she assumed this to be the case.

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'm not persuaded that Mrs D'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 she would have pressed ahead with her purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I don't think the credit relationship between Mrs D and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

### **The provision of information by the Supplier at the Time of Sale**

The PR says that Mrs D wasn't given sufficient information at the Time of Sale by the Supplier in order to make an informed choice.

It isn't clear what information the PR thinks the Supplier failed to provide at the Time of Sale. But as I've already indicated, the case law on Section 140A makes it clear that it doesn't automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

So, while I acknowledge that it's also possible that the Supplier didn't give Mrs D sufficient information, in good time, in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'), even if that was the case, neither Mrs D nor the PR have persuaded me that she was deprived of information that would have led her to make a different purchasing decision at the Time of Sale. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why they led to a financial loss.

In conclusion, given the facts and circumstances of this complaint, I didn't think that the Lender acted unfairly or unreasonably when it dealt with Mrs D's Section 75 claims, and I wasn't persuaded that the Lender was party to a credit relationship with her under the Credit Agreement that was unfair to her for the purposes of Section 140A of the CCA. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct the Lender to compensate her.

Following my provisional decision, I also communicated how I wasn't persuaded that Mrs D's credit relationship with the Lender was unfair to her for reasons relating to the commission arrangements between it and the Supplier.

The Lender didn't respond to the PD.

The PR responded to the PD and my further communication (detailing how I wasn't persuaded that Mrs D's credit relationship with the Lender was unfair to her for reasons relating to the commission arrangements between it and the Supplier) to say it had nothing further to add.

Having received responses, I'm now finalising my decision.

## **The legal and regulatory context**

In considering what's fair and reasonable in all the circumstances of the complaint, I'm 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 isn't 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.

As the Lender hasn't responded to my PD and the PR has provided no further comments or evidence for my consideration in respect of it (or my further communication detailing how I wasn't persuaded that Mrs D's credit relationship with the Lender was unfair to her for reasons relating to the commission arrangements between it and the Supplier) I can confirm that I see no reason to depart from my provisional findings.

So in conclusion, given the facts and circumstances of this complaint, I don't think that the Lender acted unfairly or unreasonably when it dealt with Mrs D's Section 75 claims, and I'm not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement that was unfair to her 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 her.

**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 Mrs D to accept or reject my decision before 5 March 2026.

Peter Cook  
**Ombudsman**