

The complaint

Mr B and Ms N'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 claims under Section 75 of the CCA.

What happened

Mr B and Ms N purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 25 February 2019 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 910 fractional points at a cost of £18,393, reduced to £13,998 after they traded in (for £4,395) an existing trail membership they had previously purchased (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr B and Ms N 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 B and Ms N paid for their Fractional Club membership by taking finance of £18,381¹ from the Lender (the 'Credit Agreement').

Mr B and Ms N – using a professional representative (the 'PR') – wrote to the Lender on 10 November 2021 (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 Mr B and Ms N's concerns as a complaint and issued its final response letter on 15 June 2022, 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 PR on behalf of Mr B and Ms N disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. In its response to the Investigator's assessment the PR reiterated that Fractional Club was marketed and sold to Mr B and Ms N as an investment in breach of Regulation 14(3).

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.

¹ discounted purchase price of £13,998 plus £4,383 trial membership loan settlement figure

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

I considered the matter and issued a provisional decision (the 'PD') on 21 August 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’ve not commented on, or referred to, something that either party has said, that doesn’t mean I’ve not considered it.

Section 75 of the CCA: the Supplier’s misrepresentations at the Time of Sale

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

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. 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.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr B and Ms N were:

- 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, Mr B and Ms N say little to nothing to persuade me that they were 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 Mr B and Ms N 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 when it dealt with this particular Section 75 claim.

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.

Mr B and Ms N say that they couldn't holiday where and when they 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 Mr B and Ms N states that the availability of holidays was/is subject to demand. I accept that they may not have been able to take certain holidays. But I've not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

The PR also says on Mr B and Ms N's behalf that the Supplier breached the Purchase Agreement because it went into liquidation. And if certain parts of the Supplier's business were put into administration, I can understand why the PR is alleging that there was a breach of the Purchase Agreement as a result. However, neither Mr B or Ms N nor the PR have said, suggested or provided evidence to demonstrate that they are no longer:

1. a member of the Fractional Club;
2. able to use their Fractional Club membership to holiday in the same way they could initially; and

3. entitled to a share in the net sales proceeds of the Allocated Property when their Fractional Club membership ends.

So, from the evidence I've seen, I don't think the Lender is liable to pay Mr B and Ms N 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 relation to this aspect of the complaint either.

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 Mr B and Ms N 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 Mr B and Ms N and the Lender.

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

Mr B and Ms N'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 Mr B and Ms N; and
2. Mr B and Ms N were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.

However, as things currently stand, none 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 Mr B and Ms N 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. But from the information provided, I'm not satisfied that the lending was unaffordable for Mr B and Ms N.

I acknowledge that Mr B and Ms N 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 didn't want to. They were also given a 14 day cooling off period and they haven't provided a credible explanation for why they didn't cancel their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr B and Ms N made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr B and Ms N'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 the PR now says the 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.

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

The Lender doesn't dispute, and I'm satisfied, that Mr B and Ms N's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club membership as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But the PR says that the Supplier did exactly that at the Time of Sale.

The term "investment" isn't defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

A share in the Allocated Property clearly constituted an investment as it offered Mr B and Ms N the prospect of a financial return – whether or not, like all investments, that was more than what they 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 Mr B and Ms N 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 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'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 Mr B and Ms N, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr B and Ms N 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 Mr B and Ms N 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 Mr B and Ms N 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, the prospect of a financial gain from Fractional Club membership wasn't an important and motivating factor when Mr B and Ms N decided to go ahead with their purchase.

I can see that in a client statement dated June 2020 Mr B (on behalf of himself and Ms N) said:

"The rep told us that we would be able to use these points to travel all over the world. We were shown a brochure of all the places we would be able to travel to, and these places all had 5 star accommodation, and were very luxurious. We had also been told that these resorts were exclusive and for members only. We had been shown so many options, and then we were asked where we really wanted to go. We told the rep that we had always fancied traveling to Aruba. We had already purchased a trial membership with [the Supplier], but we were told that we did not have enough points to get to Aruba. We were told that if we signed up that day, we would be given a further 1000 points, and this meant we could get whatever we wanted. We were also offered a free week holiday as another incentive for signing up that day. It was put to us that we would be able to book where [we] wanted, when we wanted so, getting the week we wanted would never be a problem.

After we made this purchase, we had gone on our free holiday and we had another catchup with the reps on site. While we were there, the rep tried again to sell us some more points. We became very annoyed at this meeting as the rep had told us that we needed to buy some more points, if we wanted to go to Aruba. We explained to the rep that the only reason we had signed up previously, was so we could travel over there, and now they were telling us that we never even had enough points.

We entered into this contract on the promise that we would be able to travel to anywhere we wanted throughout the world. However, this was completely untrue, and after promising us that we could go to our most desired place, we later found out that we never even had enough points, and the rep had completely deceived us.”

The above doesn't mean Mr B and Ms N 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 given what I say above and given that Mr B only referenced him and Ms N being marketed and sold membership as an investment in breach of Regulation 14(3) just once in the client statement, I'm simply not persuaded that their purchase was motivated by their share in the Allocated Property and the possibility of a profit. Therefore 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'm not persuaded that Mr B and Ms N'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 don't think the credit relationship between Mr B and Ms N and the Lender was unfair to them 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 Mr B and Ms N weren'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 Mr B and Ms N 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 Mr B and Ms N nor the PR have persuaded me that they were deprived of information that would have led them 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, as things currently stand, I don't think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim(s), and if I put the issue of commission to one side for the time being, I'm not persuaded that the Lender was party to a credit relationship with Mr B and Ms N 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.

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

The Lender responded to the PD and accepted it.

The PR responded to the PD and said it had nothing further to add.

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

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 has accepted my PD and the PR has confirmed it has nothing further to add to it (or my further communication detailing how I wasn't persuaded that Mr B and Ms N's credit relationship with the Lender was unfair to them 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 Mr B and Ms N's Section 75 claims, and I'm 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 B and Ms N to accept or reject my decision before 12 January 2026.

Peter Cook
Ombudsman