DRN-5940391

The complaint

Mr and Mrs L'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 and Mrs L were members 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 their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 20 May 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 7,000 fractional points, and after converting their existing 7,000 non-fractional points (for which they were given a conversion value of £1 per point) they ended up paying £4,760 for the Fractional Club membership (the 'Purchase Agreement').

Unlike their previous membership, Fractional Club was asset backed – which meant it gave Mr and Mrs L 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 L paid for their Fractional Club membership by taking finance of £4,760 from the Lender (the 'Credit Agreement').

Mr and Mrs L – using a professional representative (the 'PR') – wrote to the Lender on 16 December 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 initially dealt with Mr and Mrs L's concerns as a claim, which it rejected. But after the complaint was referred to the Financial Ombudsman Service the Lender considered it again, issuing its final response letter on 14 June 2022, rejecting their complaint on every ground.

Mr and Mrs L did not accept this outcome and asked for the complaint to be considered by our Service. As part of the PR's submissions, it sent a statement in the name of Mr L, dated 27 January 2021. This set out his and Mrs L's recollections of their entire relationship with the Supplier (along with details of a purchase of a timeshare from a different provider). As far as is relevant to the Time of Sale and the Fractional Club purchase, he said:

> *"On the 4th of June 2013, we made a purchase of Fractionals... The meeting was pressured, and very persuasive, in which we were told about the benefits of purchasing Fractionals with [the Supplier]. We were assured that through purchasing Fractionals, it would be possible to resell these Fractionals within 15 years, and therefore, after this sale we would be free of this timeshare. We were assured that when the Fractionals were resold, we would receive a percentage of the resale value, which we could then keep for ourselves. Therefore, seeing this Fractional system may be a way out of this*

timeshare, and being assured that the Fractional system would be a far superior system, we agreed to this purchase.

[…]

However, since purchasing these timeshare agreements with [the Supplier], we have found that we were unable to get any availability when attempting to book holidays, due to a complete lack of flexibility. The maintenance fees for this time share with [the Supplier] had increased to £1,800 per annum, which due to our retirement and therefore reduced income, these fees are no longer affordable."

Mr and Mrs L's complaint was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mr and Mrs L disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. In addition, Mr and Mrs L submitted a further statement, dated 23 March 2024. This said, in addition to what they had said previously:

"We wish to add to this statement that when we advise that we would receive a percentage of the resale this was by way of an investment with a profit. We were under the impression the resale value would increase thus increasing our profitable share of this investment."

The provisional decision

I considered the matter and issued a provisional decision (the 'PD') setting out my initial thoughts on the merits of Mr and Mrs L's complaint.

In the PD 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 currently 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.

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 and Mrs L were:

(1) *Told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true.*

(2) *Told by the Supplier that Fractional Club membership was an "investment" when that was not 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 was not 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 and Mrs L 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 issues in question that constituted a false statement of fact.

So, while I recognise that Mr and Mrs L 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 have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not 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 and Mrs L say that they could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

Yet, like any holiday accommodation, availability was not 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 and Mrs L states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday on a number of occasions. So, whilst I accept that they may not have been able to take certain holidays, I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr and Mrs L any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

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

I've already explained why I'm not persuaded that the Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale, nor that the contract was 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 relationship between Mr and Mrs L and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. *The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale;*
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; and*
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 L and the Lender.

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

Mr and Mrs L'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 and Mrs L; and*
2. *Mr and Mrs L were 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 a reason 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 and Mrs L 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 am not satisfied that the lending was unaffordable for Mr and Mrs L.

And as regards the pressure they say they were put under, I acknowledge that Mr and Mrs L 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. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs L 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 and Mrs L'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

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs L the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs L as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

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

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs L, 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.

But 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 and Mrs L as an investment in breach of Regulation 14(3).

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

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 (if there was one) had on the fairness of the credit relationship between Mr and Mrs L and the Lender under the Credit Agreement and related Purchase Agreement, as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs L 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 was not an important and motivating factor when Mr and Mrs L decided to go ahead with their purchase. I'm simply not persuaded that was the case. I'll explain.

As I've said, as part of the initial submissions to this Service, there was a statement from Mr L setting out his recollections of his and Mrs L's relationship with the Supplier. The statement, typed for him by the PR, sets out what they remembered about the Time of Sale and what he and Mrs L were told and what they thought. And importantly, it sets out why they wanted to buy it:

> *"We were assured that through purchasing Fractionals, it would be possible to resell these Fractionals within 15 years, and therefore, after this sale we would be free of this timeshare. We were assured that when the Fractionals were resold, we would receive a percentage of the resale value, which we could then keep for ourselves. Therefore, seeing this Fractional system may be a way out of this timeshare, and being assured that the Fractional system would be a far superior system, we agreed to this purchase."*

This does not, in any way, say that they bought it for the investment element, or a potential profit. In my view it sets out clearly that they wanted to have the guaranteed exit with the much shorter membership term that the Fractional Club offered when compared to their existing points-based membership. And the reference to a "far superior system" is likely to be referring to the booking and accommodation availability that the Fractional Club offered.

And my view, that the membership was bought for the holidays it could provide, is strengthened by Mr L setting out what disappointed them about how the membership worked in practice:

> *"However, since purchasing these timeshare agreements with [the Supplier], we have found that we were unable to get any availability when attempting to book holidays, due to a complete lack of flexibility. The maintenance fees for this time share with [the Supplier] had increased to £1,800 per annum, which due to our retirement and therefore reduced income, these fees are no longer affordable."*

So, his statement, written before the complaint was submitted, in my view did not set out that their purchase of the Fractional Club was motivated by the investment element of the membership and a potential profit on the sale of the Allocated Property. And indeed, they weren't complaining that the investment element was not what they had been led to believe, they were complaining about not being able to book the holidays they wanted, and no longer being able to afford the maintenance fees.

But Mr and Mrs L sent in a supplementary statement for me to consider:

> *"We wish to add to this statement that when we advise that we would receive a percentage of the resale this was by way of an investment with a profit. We were under the impression the resale value would increase thus increasing our profitable share of this investment."*

This was written in March 2024, after the Investigator sent his view, which set out why he didn't think the credit relationship with the Lender was unfair. It was also after the judgement

in 'Shawbrook & BPF v FOS'[1] in 2023. This judgement found, in two separate complaints, that the Financial Ombudsman Service had correctly said that the particular credit relationships being considered had been rendered unfair for the purposes of Section 140A of the CCA as a result of a breach of Regulation 14(3) by the timeshare suppliers. This breach was that the Supplier's had, in the particular circumstances of those cases, each sold and/or marketed the fractional timeshare as an investment.

There is additional detail added in the supplementary statement when compared to what they previously said about what they thought they would receive in terms of the return on the sale of the Allocated Property. The difference is that Mr and Mrs L now say that they were told of a "profit" by the Supplier, as opposed to "a percentage of the resale value" in their original statement.

I find it hard to understand why, if the Fractional Club membership was bought, as they now attest, because of the potential profit, why that wasn't set out in their original statement, as it is important and goes to the very heart of their complaint. And it seems unlikely to me that their memory of the events would have improved three years after they originally set out what they remembered.

So, I think there is a real risk that Mr and Mrs L's later recollections have been tainted, even subconsciously, by the complaints process, what had been said by the PR in their post-view discussions, and even by the wider public conversations around timeshares, which it is likely that Mr and Mrs L would have had an interest in, given they had an active complaint with this Service regarding this exact subject.

So, I do not feel I can place much, if any, weight on what has been said in their supplementary statement.

So, given what I have set out above, I am not persuaded that the investment element was a motivation for Mr and Mrs L when they decided to purchase the Fractional Club membership at the Time of Sale. That doesn't mean they weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs L themselves don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs L'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 for the shorter membership term and the holidays they thought it could give them, 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 L and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

Mr and Mrs L's Commission Complaint

I note that one of Mr and Mrs L's other concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit

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[1] *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin)

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. So, once the implications of that judgment become clear, I will finalise my findings on this complaint.

Conclusion

In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and if I put the issue of commission to one side for the time being, I am not persuaded that the Lender was party to a credit relationship with Mr and Mrs L 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.

But, as I've already said, once the implications of the judgement in Johnson, Wrench and Hopcraft become clear, I will finalise my findings on this complaint."

The responses to the provisional decision

The Lender responded to the PD and accepted it, and provided details of the commission arrangement it had with the Supplier in respect of this Credit Agreement. The PR, on Mr and Mrs L's behalf, did not accept it, but provided no further evidence that it wished me to consider.

Following this, and further to my PD, I set out to both sides how I was not persuaded that Mr and Mrs L's credit relationship with the Lender was unfair to them for reasons relating to the commission arrangements between it and the Supplier.

The PR responded to say it had nothing further to add.

Having received the relevant responses from both sides, I am now finalising my 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, 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 Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

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 sides, I've considered the case afresh. And having done so, and because no new evidence has been submitted or arguments made in response to my initial findings, I see no reason to depart from the outcome as set out in the provisional decision above.

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 L's Section 75 claims, 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 Mr and Mrs L.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and Mr L to accept or reject my decision before 9 February 2026.

Chris Riggs
Ombudsman