

The complaint

Mr and Mrs A'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 A were existing members of a timeshare provider (the 'Supplier') – having purchased 1,500 fractional points from the Supplier in August 2013. 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 16 April 2014 (the 'Time of Sale'), trading in their 1,500 fractional points towards its purchase. They entered into an agreement with the Supplier to buy 1,820 fractional points at a final cost of £6,000 (the 'Purchase Agreement').

This Fractional Club membership, like their previous one, was asset backed – which meant it gave Mr and Mrs A 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 A paid for their Fractional Club membership by taking finance of £6,000 from the Lender in their joint names (the 'Credit Agreement').

Mr and Mrs A – using a professional representative (the 'PR') – wrote to the Lender on 1 February 2022 (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 A's concerns as a claim, which it rejected. But Mr and Mrs A were unhappy with this outcome, so the Lender dealt with their concerns as a complaint, and issued its final response letter on 20 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.

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

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 A'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 do not currently 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.

Mr and Mrs A's claims under Section 75 of the CCA

In the Letter of Complaint to the Lender, Mr and Mrs A have said that the Supplier, at the Time of Sale, made misrepresentations upon which they relied when making their decision to purchase the Fractional Club membership. They also said that they were unable to book their chosen holidays due to problems with availability, which seems to be a complaint that the Supplier was not living up to its end of the bargain, and thus breaching the terms of the Purchase Agreement.

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, and these relevant conditions appear to have been met here.

However, the Limitation Act 1980 (the 'LA') imposes time limits for people to start legal proceedings – and there are different time limits for different types of claims. Essentially, this means that if someone waits too long to make a claim, the court will usually say it's 'time-barred'. For this reason, if a consumer makes a claim after the relevant time-limit has expired, this Service will usually say it was fair for the creditor to rely on the LA to decline the claim.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim a consumer could make against the Supplier.

The claim for Misrepresentation

The limitation period to make a claim against the Lender for alleged misrepresentation(s) by the Supplier expires six years from the date on which Mr and Mrs A had everything they needed to make such a claim.

As the letter of complaint to the Lender makes clear, Mr and Mrs A made their purchase of the Fractional Club membership on 16 April 2014. And Mr and Mrs A say they made this purchase based on the alleged misrepresentations of the Supplier, which they say they relied on. And as a loan from the Lender was used to help finance the purchase, it was when Mr and Mrs A entered into the Credit Agreement that they suffered a loss – which means it was at that time that they had everything they needed to make a claim, so needed to make it within six years.

So, Mr and Mrs A needed to notify the Lender of their claim by 16 April 2020. But Mr and Mrs A first notified the Lender of their claim for alleged misrepresentations by the Supplier on 1 February 2022. As that was more than six years after they entered into the Credit Agreement and related Purchase Agreement, I don't think it would have been unfair or

unreasonable of the Lender to rely on the LA to decline the claim. As such I do not think the Lender needs to do anything further in relation to their claim for misrepresentation.

The claim for 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 A 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. And because they haven't said exactly when this happened, I am unable to say whether the Lender would likely have had a defence under the LA in a similar way to their claim for misrepresentation. However, I don't think that matters in these circumstances, as I don't think the Lender was unfair when it rejected the claim.

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 A states that the availability of holidays was/is subject to demand. 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 has 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 A 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 75 - 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, so it does not need to do anything further in this regard.

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, or that the Purchase Agreement 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 A 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, 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; 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 A and the Lender.

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

Mr and Mrs A'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 A; and
2. Mr and Mrs A 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 A 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 A.

And as regards their allegation of being put under undue pressure, I acknowledge that Mr and Mrs A 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 A 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 A'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 A 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 A 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 A, 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 A 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 A 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 A 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 A decided to go ahead with their purchase. I'm simply not persuaded that was the case. I'll explain.

As part of the PR's submissions to this Service, it sent a statement from Mrs A setting out her recollections of both of their purchases from the Supplier. As regards what she

remembers about the Time of Sale when they bought the Fractional Club membership she says:

“On 16th of April 2014 we purchased an additional number of Fractional Points with [the Supplier]. I am unsure as to the exact number of fractional points that we purchased. We were on holiday and we met with the sales team who suggested that we increase our Fractional Points holding. This was not too pressurising, however the sales team were very good at talking and persuading us that this was the best option. To be perfectly honest I have no idea why we upgraded, I can only assume that we were led to believe that it would improve our membership in some way. We were under the impression that this upgrade would also act as a financial investment, that could be sold after 19 years.

[...]

Therefore, we purchased an additional number of Fractional Points with [the Supplier]. I do not know how much this cost.”

Here, Mrs A is very candid in saying that she can't actually remember why they decided to trade in their existing fractional points and buy the Fractional Club membership, and she can't remember what the Supplier told them. She does say that they were under the impression that the membership would act as a financial investment, but she doesn't say that the Supplier told them this, or even that that was the reason they bought it. She simply says she cannot remember.

But this was their second fractional membership, so I have also considered what she has said about the first time they made a purchase, as this could go some way to help me understand why they bought fractional points at all.

As regards their first fractional membership purchase, after setting out what they were told regarding holidays and how they were disappointed with availability, she says:

“Additionally, we were told that this product would act as a financial investment and in 19 years we would be able to sell the points, after the scheme had increased in value providing us with a profit...”

So, she has set out that she remembers the sales personnel presenting their first membership as an investment, so this perhaps explains what she meant when she says that they were under the impression that the Fractional Club membership would work in a similar way.

But this says nothing about this investment element being a motivation for them to make the purchase. Indeed, I find it hard to understand how, if the Fractional Club membership was sold and/or marketed to them as an investment, and that was actually one of the driving factors behind their decision to make the purchase as they are now attesting, she cannot remember that.

But in addition to this, whilst I can understand that she maybe cannot remember how many points they bought at the Time of Sale, as that isn't particularly relevant to how much potential profit they could make, she also says she can't remember how much it cost. I find this hard to understand if it was bought as an investment – in my view the price of a product, if bought as an investment, is a particularly important detail when it comes to potential profit in the future from the sale of the Allocated Property.

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 A 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 A'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 holidays it could provide 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 A 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 and Mrs A were not 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 does not 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 is possible that the Supplier did not give Mr and Mrs A 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 and Mrs A 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.

Mr and Mrs A's Commission Complaint

*I note that one of Mr and Mrs A'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 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 A 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 judgment 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 that it had paid to the Supplier. The PR, on Mr and Mrs A'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 A'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 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 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 A'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 A.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 10 February 2026.

Chris Riggs
Ombudsman