DRN-5960049

The complaint

Mr R'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 R purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 12 February 2017 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 810 fractional points at a cost of £13,910 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr R 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 his membership term ends.

Mr R paid for his Fractional Club membership by taking finance of £13,910 from the Lender (the 'Credit Agreement').

Mr R complained to the Lender on 4 June 2017, saying it had funded *"an illegal contradictory contract of fractional ownership"* and that the Lender should've been aware that it was illegal to sell Fractional Club membership.

The Lender responded to Mr R on 12 July 2017, rejecting his complaint. It said that Mr R was provided with appropriate information about Fractional Club membership and the Credit Agreement before he entered the contracts.

On 28 June 2017, Mr R referred the complaint to the Financial Ombudsman Service. He added that the purchase price was unrealistically and unfairly inflated. He described Fractional Club membership as the *"purchase of a phantom property"* and suggested the Supplier acted fraudulently.

On 7 August 2019, a professional representative (the 'PR') wrote to the Lender (the 'Letter of Complaint') on Mr R's behalf to raise several new concerns – specifically about alleged misrepresentations by the Supplier and that Fractional Club membership was an Unregulated Collective Investment Scheme, which the Supplier was not authorised to sell. Since then, the PR has raised some further matters it says are relevant to this outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail.

The Lender dealt with Mr R's new concerns as a complaint and issued its final response letter on 9 September 2019, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service by the PR, and the two complaints were combined since they were all about the same sale of Fractional Club membership. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

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

I issued a provisional decision explaining why I was *not* planning to uphold the complaint.

The business replied to say it accepted my provisional decision – and confirmed that, in relation to the arranging of the Credit Agreement, no payment passed between the Lender and Supplier (such as a commission or subsidy).

The PR responded to say it disagreed. In summary, its reasons were that:

- The Supplier sold or marketed Fractional Club membership as an investment. Fractional timeshares were sold in this way across the timeshare industry.

- The PR provided the following new evidence which it says shows Mr R purchased Fractional Club membership because he saw it as an investment that would lead to a financial gain (a profit):

    - An email dated 29 March 2019 from Mr R to a timeshare advice company in which Mr R wrote:

        - *"I purchased this as a way of taking the holidays and getting my money back at the end when the flat was sold."*

    - A questionnaire completed by the timeshare advice company when speaking to Mr R on 29 March 2019 which said:

        - *"…told would be able to sell @ end & recover all money invested… Bad investment."*

    - A note the PR made during a call with Mr on 4 April 2019 which said:

        - *"reasons - a lie now - told it was an investment - able to sell after 15 years - recover the money invested."*

- The payment of maintenance fees to maintain the Allocated Property were intended to preserve or enhance its value so that it may be sold at a profit. This was central to overcoming Mr R's initial reluctance to making the purchase and justified his financial commitment.

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 no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out 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.

In line with my provisional decision, I have decided not to uphold this complaint.

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") if 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 R was:

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 he owned a 'fraction' of the Allocated Property when that was not true as it was owned by a trustee.

3. Told by the Supplier that Fractional Club membership was an "investment" when that was not true.

Neither the PR nor Mr R have set out in any detail what words and/or phrases were allegedly used by the Supplier to misrepresent Fractional Club for the reason given in points 1 or 2. However, the PR says that such representations were untrue because the Allocated Property was legally owned by a trustee and there was no indication of what duty of care it had to actively market and sell the property. Further, there is no guarantee that any sale will result at all, leaving prospective members to pay their annual management charge for an indefinite and unspecified period.

However, I cannot see why the phrases in points 1 or 2 above would have been untrue at the Time of Sale even if it was said. It seems to me to reflect the main thrust of the contract Mr R entered. And while, under the relevant Fractional Club Rules, the sale of the Allocated Property could be postponed for up to two years by the 'Vendor'[1], longer than that if there were problems selling and the 'Owners'[2] agreed, or for an otherwise specified period provided there was unanimous agreement in writing from the Owners, that does not render the representation above untrue. So, I am not persuaded that the representation above constituted a false statement of fact even if it was made.

As for point 3, it does not strike me as a misrepresentation even if such a representation had been made by the Supplier (which I make no formal finding on). 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 – nor was it untrue to tell prospective members that they would receive some money when the allocated property is sold. After all, a share in an allocated property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give prospective members that interest, it did not change the fact that they acquired such an interest.

The PR has raised other matters as potential misrepresentations, but it seems to me that they are not allegations of the Supplier saying something that was untrue. Rather, it is that Mr R wasn't told things about the way the membership worked, for example, one was that the obligation to pay management fees could be passed on to his children. It seems to me that these are allegations that Mr R wasn't given all the information he needed at the Time of Sale, and I will deal with this further below.

So, while I recognise that Mr R - 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 Section 75 claim.

[1] Defined in the FPOC Rules as "CLC Resort Developments Limited".
[2] Defined in the FPOC Rules as "a purchaser who has entered into a Purchase Agreement and has been issued with a Fractional Rights Certificate (which shall include the Vendor for such period of time until the maximum number of Fractional Rights have been acquired)."

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 R's complaint suggests that he could not holiday where and when he wanted to. On my reading of the complaint, this 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 R states that the availability of holidays was/is subject to demand. I accept that Mr R may not have been able to take certain holidays. But 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 R 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 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 R 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.

4. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements.

5. The inherent probabilities of the sale given its circumstances.

6. Any existing unfairness from a related credit agreement.

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

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

Mr R's complaint about the Lender being party to an unfair credit relationship was and is made because:

1. The Supplier pressured Mr R into purchasing Fractional Club membership at the Time of Sale.

2. The Supplier marketed and sold Fractional Club membership as an investment in breach of Regulation 14 (3) of the Timeshare Regulations.

However, none of this strikes me as a reason why this complaint should succeed.

I acknowledge that Mr R may have felt weary after a sales process that went on for a long time. But he says little about what was said and/or done by the Supplier during his sales presentation that made him feel as if he had no choice but to purchase Fractional Club membership when he simply did not want to. He was also given a 14-day cooling off period and he has not provided a credible explanation for why he did not cancel his membership during that time. With that being the case, there is insufficient evidence to demonstrate that Mr R made the decision to purchase Fractional Club membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

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

The Lender does not dispute, and I am satisfied, that Mr R'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 and Mr R say that the Supplier did exactly that at the Time of Sale.

The term "investment" is not 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 could constitute an investment as it offered Mr R the prospect of a financial return – whether or not, like all investments, that was more than what he 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*.[3]

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

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

On the one hand, the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr R, the financial value of his 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 R 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 issue for the purposes of this decision.

Was the credit relationship between the Lender and Mr R 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 R 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 R and the Lender that was unfair to him and warranted relief as a result, it is important to consider whether the Supplier's breach of Regulation 14 (3) led him to enter into the Purchase Agreement and the Credit Agreement.

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 R decided to go ahead with his purchase.

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[3] The PR has argued that Fractional Club membership amounted to an Unregulated Collective Investment Scheme, however this was considered and rejected in the judgment in *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).

As I said in my provisional decision, Mr R's statement, setting out his recollections of what happened at the time of sale, says the following about what was said about Fractional Club being an investment:

> *"…we were told this was an investment, and we would be able to sell the ownership after 15 years and recoup all the money we invested…"*

While Mr R uses the term investment, he clarifies that what he understood this to mean was that he could recoup all the money he invested (in this context meaning what he had paid for Fractional Club membership). Not that he could make a profit.

To uphold this complaint, I need to be satisfied that Mr R's purchase of Fractional club membership was motivated by the hope or expectation that he would make a profit – since that would mean that a breach of Regulation 14 (3) by the Supplier caused him to enter the Purchase Agreement and Credit Agreement when he otherwise would not have done so. But, by his own recollection, Mr R only hoped or expected to get his money back.

The PR's new evidence does not change my opinion that I should not uphold the complaint on this basis. The email is the only new direct evidence from Mr R. In that he talks about *"getting my money back at the end when the flat is sold."* That is in line with what he said in his statement, so appears to be consistent with Mr R having a hope or expectation of getting back what he paid for Fractional Club membership. It is certainly not clear from the email that he had the hope or expectation of making a profit.

The questionnaire and call note were not written directly by Mr R. So, I think they are less reliable than what he wrote himself. There is a much higher chance that what has been written down in the questionnaire and call note does not accurately reflect what Mr R said at the time.

The questionnaire speaks of Mr R being told he would *"recover all money invested"* and that it was a *"bad investment."* The PR suggests that by *"all money invested"* Mr R meant the purchase price of Fractional Club membership, plus the interest payable under the Credit Agreement and the annual maintenance/management fees – and therefore it indicates that Mr R expected to make a profit on the purchase price. However, Mr R has not said this himself, neither in his email nor his statement. Had the PR's interpretation been correct, and this was important to Mr R, I would have expected him to make that point consistently and clearly in his own evidence. As it stands, the use of the word *"all"* could mean what the PR says, or it could mean something else (such as just the purchase price or initial "investment").

The call note uses the word investment to explain why Mr R purchased Fractional Club membership. But much like his statement, it appears to clarify this by saying that he expected to *"recover the money invested"*. Again, it is not clear that this means what the PR now says Mr R meant (the purchase price, loan interest and maintenance/management fees) as opposed to just the purchase price. And, as I said above, Mr R did not write this himself.

Overall, I do not think Mr R (and the evidence as a whole) is clear and consistent enough that I can say the PR's interpretation of these words is accurate – such that I can conclude that Mr R purchased Fractional Club membership because he was attracted to the possibility of making a profit (as opposed just getting back what he'd paid for it in the first place).

That doesn't mean Mr R 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 and given his interest in getting his money back at the end of the membership term. But as Mr R himself doesn't persuade me that his purchase was motivated by the possibility of making a profit, I don't think a breach of Regulation 14 (3) by the Supplier was likely to have been material to the decision he ultimately made.

The PR has suggested that the payment of maintenance fees to maintain the Allocated Property were intended to preserve or enhance its value so that it may be sold at a profit. And that this was central to overcoming Mr R's initial reluctance to making the purchase and justify his financial commitment. But Mr R has not said he was initially reluctant to make the purchase nor that the maintenance fees were central to overcoming this or justifying the purchase.

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 R'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 he would have pressed ahead with his purchase whether or not there had been a breach of Regulation 14 (3). And for that reason, I do not think the credit relationship between Mr R 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 R were not given sufficient information at the Time of Sale by the Supplier about membership, including about the ongoing costs of Fractional Club membership and the fact that Mr R's heirs could inherit these costs.

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.

I acknowledge that it is also possible that the Supplier did not give Mr R sufficient information, in good time, on the various charges he could have been subject to as Fractional Club members to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mr R nor the PR have persuaded me that he would not have pressed ahead with his purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its facts and circumstances.

As for the PR's argument that Mr R's heirs would inherit the on-going management charges, I fail to see how that could be the case or that it could have led to an unfairness that warrants a remedy.

Mr R has suggested the Supplier acted fraudulently, but he has not explained how. Nor have I seen any evidence that makes me the Supplier did so. His suggestion that Fractional Club membership was illegal appears to mirror the PR's argument that it was an Unregulated Collective Investment Scheme that the Supplier was not authorised to sell. But that argument has no merit, as noted above in footnote 3 at the bottom of page 6 of this decision.

Conclusion

In conclusion, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with Mr R under the Credit Agreement that was unfair to him 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 Mr R.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 22 December 2025.

Phillip Lai-Fang
Ombudsman