

The complaint

Mr and Mrs E'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 E were the members of a timeshare provider (the 'Supplier') – having purchased a number of products with it overtime. 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 11 April 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,932 fractional points at a cost of £9,733 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs E 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 E paid for their Fractional Club membership by taking finance of £9,733 from the Lender (the 'Credit Agreement').

Mr and Mrs E – using a professional representative (the 'PR') – wrote to the Lender on 5 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.

In April 2020 the complaint was referred to the Financial Ombudsman Service.

The Lender dealt with Mr and Mrs E's concerns as a complaint and issued its final response letter on 28 February 2022, rejecting it on every ground.

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

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

The legal and regulatory context

In considering what's fair and reasonable in all the circumstances of the complaint, I'm required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service’s website. And with that being the case, it isn’t necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

The 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

I considered the matter and issued a provisional decision (the ‘PD’) dated 23 October 2025. In that decision, I said:

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

And having done that, I don’t currently think this complaint should be upheld.

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

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

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

As a general rule, I think it's reasonable for creditors to reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 ("LA"), as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would have been available in court. So, it's relevant to consider whether Mr and Mrs E's Section 75 claim was time-barred under the LA before the PR put the claim to the Lender on their behalf.

As I mentioned above, a claim under Section 75 is a "like claim". This means it mirrors the claim Mr and Mrs E could have made against the Supplier.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued. A claim for breach of contract against the Supplier would also be subject to a limitation period of six years from the date on which the cause of action accrued.

Any claim against a lender under Section 75 is also "an action to recover any sum by virtue of any enactment" under Section 9 of the LA. Such claims also have a time limit of six years from the date the cause of action accrued.

In claims for misrepresentation, the cause of action accrues at the point a loss is incurred. In Mr and Mrs E's case, that's when they entered the agreement to purchase the timeshare, and the related Credit Agreement, on 11 April 2013. This would be mirrored in the claim against the Lender.

Mr and Mrs E first notified the lender of their Section 75 claim in November 2021, more than six years after the cause of action accrued in relation to their claims for misrepresentation. So I don't think it was unfair or unreasonable of the Lender to decline the part of the claim relating to the Supplier's alleged misrepresentations.

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 and Mrs E say that they couldn't holiday where and when they wanted to.

Notwithstanding it's unclear when this alleged breach occurred in this case, and this is necessary information to have when considering whether the Lender might have a defence under the LA, just as it did against Mr and Mrs E's concerns of misrepresentation, I accept it's possible that the alleged breach occurred within six years of the date Mr and Mrs E notified the Lender of their claim. But I don't find it necessary to make a finding on this point.

Mr and Mrs E say that they couldn't holiday where and when they wanted to – which, on my reading of the complaint, suggests that they consider that the Supplier wasn't living up to its end of the bargain, and had breached the Purchase Agreement.

But, 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 and Mrs E 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 haven't seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I've seen, I don't think the Lender is liable to pay Mr and Mrs E 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 and Mrs E 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 and Mrs E and the Lender.

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

Mr and Mrs E'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 E;
2. The interest rate on the loan was high; and
3. Mr and Mrs E were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.

However, as things currently stand, the above doesn't 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 and Mrs E 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 and Mrs E.

In relation to the interest rate on the loan the PR hasn't explained why it feels it was unfair in this particular case or why it causes the credit relationship to be unfair. Being charged interest when borrowing money is normal and I haven't seen anything to persuade me that this caused an unfairness in the credit relationship.

I acknowledge that Mr and Mrs E 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 and Mrs E 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 E'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 E 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 and Mrs E 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 and Mrs E, 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 and Mrs E 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 and Mrs E 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 and Mrs E 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.

On my reading of the evidence provided, I'm not persuaded that was what's more likely than not to have happened at the Time of Sale.

First there is no evidence from Mr and Mrs E in their own words about what happened at the Time of Sale which supports this allegation.

Secondly, although I haven't (nor can I) discount the PR's submissions in this case, these are identical in nearly all respects to other complaints I've seen from it on behalf of other complainants. In other words, they are very generic in nature.

My findings above don't mean Mr and Mrs E 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 E 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'm not persuaded that Mr and Mrs E'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 and Mrs E 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 E 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 and Mrs E 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 E 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 and Mrs E 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 and Mrs E's credit relationship with the Lender wasn't 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 and Mrs E's credit relationship with the Lender wasn't 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 and Mrs E's credit relationship with the Lender wasn't 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 and Mrs E'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 and Mrs E to accept or reject my decision before 9 January 2026.

Peter Cook
Ombudsman