DRN-5993293

The complaint

Mr S'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 him 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.

The timeshare in question was bought jointly by Mr and Mrs S, but as the loan used to finance the purchase was in Mr S's sole name, he is the only eligible complainant here. I will, however, refer to both Mr and Mrs S where it is appropriate to do so.

What happened

Mr and Mrs S were members of a timeshare provider (the 'Supplier') – having purchased their first membership in October 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 15 July 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,210 fractional points at a cost of £21,644. But after trading in their existing fractional points, they ended up paying £9,644 for their Fractional Club membership (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs S 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 S paid for their Fractional Club membership by taking finance of £21,394 from the Lender (the 'Credit Agreement') in his sole name. This consolidated the outstanding balance of a previous loan from a different lender.

Mr and Mrs S went on to make several more membership purchases from the Supplier, but none of their other purchases are being considered here and are mentioned for background purposes only.

Mr S – using a professional representative (the 'PR') – wrote to the Lender on 30 July 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 did not send a substantive response to the complaint within the eight weeks required by the regulator, so the PR, on Mr S's behalf, referred his complaint 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 S 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 S'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 S's claims under Section 75 of the CCA

In the Letter of Complaint to the Lender, Mr S has said that the Supplier, at the Time of Sale, made misrepresentations upon which he and Mrs S relied when making their decision to purchase the Fractional Club membership. He 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, a 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 S had everything he needed to make such a claim.

As the letter of complaint to the Lender makes clear, Mr and Mrs S made their purchase of the Fractional Club membership on 15 July 2014. And Mr S says they made this purchase based on the alleged misrepresentations of the Supplier, which he says they relied on. And

as a loan from the Lender was used to help finance the purchase, it was when Mr S entered into the Credit Agreement that he suffered a loss – which means it was at that time that he had everything he needed to make a claim, so needed to make it within six years.

So, Mr S needed to notify the Lender of his claim by 15 July 2020. But Mr S first notified the Lender of his claim for alleged misrepresentations by the Supplier on 30 July 2021. As that was more than six years after he 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 his 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 S says 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 Mr S hasn'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 his claim for misrepresentation. However, I don't think that matters in these circumstances, as I don't think the Lender was unfair when it did not accept 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 S 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.

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

1. *Members of the Fractional Club;*
2. *able to use their Fractional Club membership to holiday in the same way they could initially; and*
3. *entitled to a share in the net sales proceeds of the Allocated Property when their Fractional Club membership ends.*

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr S 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 did not accept 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 a claim under Section 75 of the CCA ought to succeed. But there are 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 S 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 S and the Lender.

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

Mr S'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:

- *Fractional Club was misrepresented to Mr and Mrs S at the Time of Sale;*
- *the right checks weren't carried out before the Lender lent to Mr S; and*
- *Mr and Mrs S were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.*

However, as things currently stand, none of these strike me as reasons why this complaint should succeed. I'll explain.

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 S were:

- *Told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true; and*
- *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 S says little to nothing to persuade me that they were given a guarantee by the Supplier that the Allocated Property would be sold on a specific date when such a promise would have been impossible to stand by given the inevitable uncertainty of selling property some way into the future. And as there's nothing else on file to support the PR's allegation, I'm not persuaded that there was a representation by the Supplier on the issue in question that constituted a false statement of fact.

So, while I recognise that Mr S and the PR have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at whether an unfairness in the associated credit relationship has been caused, 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 Mr S's credit relationship was rendered unfair to him for reasons of misrepresentation.

I also 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 S was actually unaffordable, before also concluding that he lost out as a result, and then consider whether the credit relationship with the Lender was unfair to him for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr S.

And as regards the allegation that they were put under undue pressure, I acknowledge that Mr and Mrs S 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 they went on to make several more timeshare purchases from the Supplier which strikes me as odd if, as they now attest, they only agreed to buy the Fractional Club membership due to the pressure they were put under. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs S 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 S's credit relationship with the Lender was rendered unfair to him 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 Mr S. And that's the suggestion that Fractional Club membership was marketed and sold to him and Mrs S 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 S 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 S 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 S, 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 S 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 S 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 S and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him and Mrs S to enter into the Purchase Agreement and him into 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 S decided to go ahead with their purchase. I'm simply not persuaded that was the case. I'll explain.

As part of Mr S's submissions to this Service, the PR sent us a statement in his name, setting out his recollections of his and Mrs S's entire relationship with the Supplier, from their first fractional points purchase in 2013, up to their last in 2018.

As regards their Fractional Club purchase at the Time of Sale he said:

> *"We were on holiday In July 2014 in Mainland Spain we were invited to an update meeting which transpired into a sales presentation. At the time of attending this meeting*

we were unaware of the commercial purpose. This persisted for the majority of the day. This was high pressured and exhausting in relation to the amount of information that we were given. The representative advised that we should upgrade so that we would have more choice for our availability, and this would allow us access to book the more luxurious accommodation and this would include the United States. We were advised that the points were on special offer and we should purchase them on the day before they become more expensive in the future. The availability did not increased [sic] after purchasing these additional points. We even tried to book out of season, we really struggled with availability, which we feel we have been mis sold as at the time of the purchase we were guaranteed the availability. At the time of purchasing these points they did not advise that the maintenance fee would increase."

On my reading of this, Mr and Mrs S upgraded from their existing membership because it would provide them more holiday accommodation availability and improved luxury. He has specified that they thought the upgraded membership would allow travel to the United States.

So, there is no mention here that they bought the Fractional Club as an investment that could provide them with a profit.

But as I've said, this was their second fractional purchase, having made their first in October 2013, so I have considered what Mr S said about how that 2013 membership was sold to them. He said:

"After the tour this meeting turned into a sales presentation, where they used persistent sales tactics. At the time we owned a timeshare with [another supplier], which they offered to take as part exchange for the [Fractional Club]. We were advised that if we purchased this product, we would have partial ownership of a property then after 19 years. [sic] The apartment would be sold, and we would receive our money back with profit. This was also a guaranteed exit from the contract. We were advised that this was an investment when we purchased."

This does suggest that their first fractional membership may have been sold and/or marketed to them as an investment. So, bearing in mind the Time of Sale I am considering here was less than one year later, it is possible that what they were told at the October 2013 sale could have influenced their purchasing decision in July 2014. But even if it did, I don't think that makes a difference to the outcome of this complaint. Their first fractional membership was bi-annual, which meant they could use their points for holiday accommodation every other year. And when they upgraded this at the Time of Sale they did so on an annual basis, which meant they could use them to take holidays every year, as opposed to every other year.

So, this supports what Mr S said about their 2014 purchase - it would provide them more holiday accommodation availability. That is why I think they probably bought the Fractional Club membership at the Time of Sale. The PR has said that Mr S has told it that each time he made a purchase he was told that it was an investment, but there is no suggestion of that in his description of what he was told at the Time of Sale. I find it hard to understand why, if it was bought as an investment as they now say, there is no mention of that in the testimony.

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 S himself doesn'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 S'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, 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 S and the Lender was unfair to him 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 S 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 S 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 S 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 for Mr S.

Mr S's Commission Complaint

I note that one of Mr S'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 did not accept 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 S 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 S.

But, as I've already said, once the implications of 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 S'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 S's credit relationship with the Lender was unfair to him 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:

<u>The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance</u>

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]

<u>The FCA's Principles</u>

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 S's Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement that was unfair to him 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 S.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 February 2026.

Chris Riggs
Ombudsman