

The complaint

Mr M and Mrs M'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 a claim under Section 75 of the CCA.

What happened

Mr M and Mrs M purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') – purchasing 1010 fractional points on 06 August 2019 for £15,130 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr M and Mrs M more than just holiday rights. It also included a share in the net sale proceeds of a property named on the relevant purchase agreement (which I'll refer to as the 'Allocated Property') after their membership term ends. Mr M and Mrs M paid for their fractional points by taking finance from the Lender of £15,130 (the 'Credit Agreement').

Mr M and Mrs M wrote to the Lender on 4 November 2020 (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 issued its final response on 12 August 2021 rejecting their complaint on every ground. So the complaint was then referred to the Financial Ombudsman Service. 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 dated 24 October 2025 which did not uphold Mr M and Mrs M's complaint. I said in that decision the following (in italics and smaller font for clarity):

I have considered all the available evidence and arguments to decide what is 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.

I should also add that I appreciate that these matters are complex and this decision will address a number of issues which may be new to Mr M and Mrs M. However it is important that they receive a detailed and comprehensive response to the key areas of this dispute, albeit appreciating that they may not be familiar with a number of these factors in this matter. I have however tried to strike a balance in this decision between detailed and comprehensive and being clear and easy to follow.

Section 75 of the CCA: the Supplier's misrepresentations at the Times of Sale

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

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Times of Sale because Mr M and Mrs M were:

- (1) told by the Supplier that they were buying an interest in a specific piece of "real property" when that was not true.
- (2) told by the Supplier that Fractional Club membership was an "investment" when that was not true.

Having considered these points neither of them strikes me as misrepresentations even if such representations 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 Mr M and Mrs M 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.

So, while I recognise that Mr M and Mrs M have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

Section 75 of the CCA: the Supplier's Breach of Contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mr M and Mrs M have said that this was a fraud and they didn't gain anything from the purchase. However it's clear that they did purchase an interest in the allocated property as I've set out.

Mr M and Mrs M have said the whole thing was a scam but clearly, they did purchase a membership and could have used their points as they saw fit. I've seen evidence from the Supplier which refers to an email dated August 2020 from Mr M and Mrs M saying they wish to cancel the membership due to the pandemic. However just because Mr M and Mrs M didn't want to use the membership or were prevented from doing so due the pandemic doesn't equate to the Supplier breaching the contract. And I note with interest that the email signs off with the comment that "we will be glad to do business with you should our circumstances improve." Indicating to me that Mr M and Mrs M had been happy with their membership but circumstances (the pandemic) had intervened.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr M and Mrs M 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 one or more unfair credit relationships?

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Times 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 relationships between Mr M and Mrs M and the Lender along with all of the circumstances of the complaint, I don't think the credit relationships 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 Times of Sale along with any relevant training material;*
- 2. The provision of information by the Supplier at the Times 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 Times 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 have then considered the impact of these on the fairness of the credit relationships between Mr M and Mrs M and the Lender.

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

Mr M and Mrs M's complaint about the Lender being party to unfair credit relationship was and is made for several reasons but which essentially fall into groups of issues with which this service is well versed through many similar complaints. So I've addressed Mr M and Mrs M's issues into the areas of concern which they best fit (albeit appreciating that Mr M and Mrs M may not be familiar with the legislation and regulation I'm about to refer to).

Mr M and Mrs M say that the Supplier misled them and carried on unfair commercial practices under Regulations 5 and 6 of the CPUT Regulations. However, as Regulations 5 and 6 state, commercial practices only amount to misleading actions or omissions if, in addition to satisfying one or more of the specific matters set out in those provisions, they cause or are likely to cause the average consumer to take a transactional decision they would not have taken otherwise. And as I haven't seen enough evidence to persuade me that, if there were any such actions or omissions at the Times of Sale (which I make no formal finding on), they led Mr M and Mrs M to make the purchasing decision they did, I'm not persuaded that anything done or nor done by the Supplier amounted to an unfair commercial practice for the purposes of those provisions.

Mr M and Mrs M also allege that the Supplier acted unfairly under Regulation 7 Schedule 1 of the CPUT Regulations (this refers to aggressive sales practices and details them). But given the limited evidence in this complaint, I am not persuaded that the Supplier did.

In addition, they say or infer that:

- 1. the right checks weren't carried out before the Lender lent to Mr M and Mrs M as they were "a low-income family".*
- 2. Mr M and Mrs M were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.*
- 3. there was one or more unfair contract terms in the Purchase Agreement.*

However, as things currently stand, none of these strikes me as reasons why this complaint should succeed.

I haven't seen anything to persuade me that the right checks weren't carried out before the Lender given this complaint's circumstances. And I can see from the application for finance that was completed Mr M and Mrs M's income details being given and their signatures being on that documentation. 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 M

and Mrs M 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. So from the information provided, I am not satisfied that the lending was unaffordable for Mr M and Mrs M when it happened.

I appreciate that circumstances for Mr M and Mrs M changed later with Mr M losing his job and the impact of the pandemic. But these circumstances don't mean the Lender did anything wrong in considering their application for credit.

I acknowledge that Mr M and Mrs M may have felt weary after a sales process that went on for a long time. But they have said 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. And I note that they had previously cancelled a timeshare membership during the fourteen-day cooling off period with the same supplier. This doesn't seem to me to be consistent with their assertion that they were forced into an arrangement they didn't want and resisted. They have not provided a credible explanation for why they did not cancel the membership during the 14-day 'cooling off' period where they could do so if that's what they wanted, knowing they had that option. And I've seen significant documentation that Mr M and Mrs M completed at the time which sets out what they were borrowing. I've also seen the sales records from the time which set out significant details about what happened at the sale and Mr M and Mrs M's personal circumstances at the time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr M and Mrs M made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

As for the suggestion that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mr M and Mrs M in practice, nor that any such terms led them to behave in a certain way to their detriment. And with that being the case, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

Overall, therefore, I don't think that Mr M and Mrs M'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 which could lead to the credit relationship with the Lender being unfair to them. And that's that Fractional Club membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

Was there a breach of Regulation 14(3) of the Timeshare Regulations?

The Lender does not dispute, and I am satisfied, that Mr M and Mrs M's Fractional Club memberships 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."

Mr M and Mrs M say that the Supplier did exactly that at the Times of Sale – saying, in summary, that they were told by the Supplier that the Fractional Club membership was the type of investment that would only increase in value.

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 Properties clearly constituted an investment as it offered Mr M and Mrs M 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 M and Mrs M 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 Times 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 M and Mrs M, the financial value of their share in the net sales proceeds of the Allocated Properties 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 M and Mrs M 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 Times of Sale, I now need to consider what impact that breach had on the fairness of the credit relationships between Mr M and Mrs M 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 M and Mrs M 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 M and Mrs M decided to go ahead with this purchase. I say this because I'm not persuaded their comments on what happened at the time of sale are sufficient for me to conclude that the Lender has considered their claim unfairly. Mr M and Mrs M describe making the purchase in a single day and they argue that they had no choice but to make the purchase due to being pressured and 'hounded' into it. That doesn't sit well with the other evidence available particularly from the sales notes from the time which show that there were discussions over different days and explaining their needs for holidays with their teenage children and their interest in other products.

They say the whole thing was a 'fraud,' but it is clear that they did purchase an interest in the allocated property as I've described. It seems clear from their email of August 2020 that they had been and were happy with the purchase of their membership at that time but because of the pandemic they no longer wanted the membership. It also seems clear from their complaint letter that recent circumstances have led to them now no longer being able to afford the repayments and that could be a strong reason for their wanting to get out of the credit agreement. I also have to remember that they had purchased over one thousand points which gave them significant holiday benefits. And this benefit is reflected in the sales notes from the time and their plans for their family holidays as described at that time. So all things considered I don't think the Lender has treated them unfairly by not placing significant weight on their letter of complaint as to their motivations at the time of purchase.

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 M and Mrs M themselves don't persuade me that their purchase was motivated by the shares 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 M and Mrs M'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 the 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 M and Mrs M 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 Times of Sale

Mr M and Mrs M say they were not given sufficient information at the Times of Sale by the Supplier about the ongoing costs of Fractional Club membership.

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 M and Mrs M sufficient information, in good time, on the various charges they could have been subject to as a Fractional Club member in order 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 M and Mrs M have persuaded me that they would not have pressed ahead with the 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 fact and circumstances.

As for the argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mr M and Mrs M in practice, nor that any such terms led them to behave in a certain way to their detriment. And with that being the case, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

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 claim, and I am not persuaded that the Lender was party to a credit relationship with Mr M and Mrs M 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.

In summary I didn't uphold Mr M and Mrs M's complaint.

Responses to my provisional findings

The Lender accepted my provisional decision. Mr M and Mrs M made further representations. Having received and reviewed these, I'm now proceeding with my final 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. The most relevant provisions and/or guidance as they were at the relevant time are CONC 3.7.3 [R], CONC 4.5.3 [R], CONC 4.5.2 [G].

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.

After considering the case afresh and having regard for what's been said in response to my provisional decision, I find it offers no persuasive reason to depart from the conclusions I've previously set out. I'll explain why.

In their response to my provisional decision Mr M and Mrs M have made the following arguments. So I shall deal with them in turn.

They've said that they were deliberately put into debt and given no paperwork or told about the ability to cancel within the cooling off period. The Supplier's correspondence log shows a history of this sale being over a number of days and that Mr M and Mrs M had contact of a positive nature for some time after the purchase. And I repeat what I said in my provisional position *"And I note that they had previously cancelled a timeshare membership during the fourteen-day cooling off period with the same supplier."* The evidence from the time is more persuasive to me that Mr M and Mrs M's recollections given some years later. And having considered the financial arrangements between all the parties here I'm not persuaded that either Mr M and Mrs M were deliberately put into debt or that there was anything in those financial arrangements which was so unfair that it I think it fair for the Lender to redress the matter in any manner.

They also say, “ *the environment was manipulative and not the right environment to force such a big decision without time to go away and read the paperwork or further meetings where we could go away read the paperwork and make an informed decision.*” However they’ve not addressed what I said in my provisional decision or given any form of reasoning for the differences between what they say and what I said which was:

“Mr M and Mrs M describe making the purchase in a single day and they argue that they had no choice but to make the purchase due to being pressured and ‘hounded’ into it. That doesn’t sit well with the other evidence available particularly from the sales notes from the time which show that there were discussions over different days and explaining their needs for holidays with their teenage children and their interest in other products.”

I don’t find Mr M and Mrs M’s comments in response to my provisional decision on this point persuasive.

They also say that other complaints about similar memberships have been successful and that they feel their complaint should be also. However I disagree. I’m not persuaded by their description of what happened when they made this purchase and I note that it is at significant odds with the contemporaneous evidence from the Supplier. I find their assertions on the matter to be unpersuasive.

Overall Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr M and Mrs M’s Section 75 claim. I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement and related Purchase 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

It is my decision that this complaint is not upheld.

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

Rod Glyn-Thomas
Ombudsman