DRN-6011456

The complaint

Mr and Mrs K'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 K were the members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. 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 31 October 2013 (the 'Time of Sale'). They entered into two agreements with the Supplier to buy 18,000 fractional points[1] at a cost of £31,680 (the 'Purchase Agreements').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs K more than just holiday rights. It also included a share in the net sale proceeds of the properties named on the Purchase Agreements (the 'Allocated Properties') after their membership term ends.

Mr and Mrs K paid for their Fractional Club membership by taking finance of £13,680[2] from the Lender (the 'Credit Agreement').

Mr and Mrs K – using a professional representative (the 'PR') – wrote to the Lender on 12 September 2018 (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 dealt with Mr and Mrs K's concerns as a complaint and issued its final response letter on 15 November 2018, rejecting it on every ground.

The complaint was assessed by an Investigator at this Service who, having considered the information on file, upheld the complaint on its merits.

The Investigator thought that the Supplier had marketed and sold Fractional Membership as an investment to Mr and Mrs K at the Time of Sale in breach of Regulation 14(3) of the Timeshare Regulations. And given the impact of that breach on their purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mr and Mrs K was rendered unfair to them for the purposes of section 140A of the CCA.

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

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[1] 18,000 fractional points acquired, in part, by way of a trade in of existing non-fractional points
[2] £31,680 less a trade in allowance of £18,000

I considered the matter and issued a provisional decision (the 'PD') on 10 September 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 and breach of contract

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.

In short, a claim against the Lender under Section 75 essentially mirrors the claim the debtor could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including the cash price of the purchase. The purchase price must be more than £100 but no more than £30,000. So, if the purchase price of the product is in excess of £30,000 (irrespective of any trade-in allowance), a claim under Section 75 can't succeed. But where the purchase price is in excess of £30,000, a claim can be considered under Section 75A of the CCA. But a claim under 75A can only relate to a 'breach of contract' – misrepresentation isn't included. I've gone on to say what I think this means in respect of Mr and Mrs K's Section 75 claim.

The purchase price of Fractional Club was £31,600. This is the price which needs to be considered when determining if a claim under Section 75 is valid, irrespective of any trade-in allowance, so I'm satisfied that Mr and Mrs K's claim for misrepresentations under Section 75 of the CCA can't succeed.

But as I've said, Section 75A of the CCA allows for a claim should the price of the purchase be over £30,000, but only in relation to a breach of contract by the Supplier.

And having considered Mr and Mrs K's claim, it's my view that there is an element of the complaint which could relate to a breach of contract, albeit not expressed in those exact terms.

Mr and Mrs K say that they couldn't holiday where and when they wanted to – which, on my reading of the complaint, suggests that the Supplier wasn't living up to its end of the bargain, potentially breaching the Purchase Agreements.

But I'm not persuaded by the evidence provided that there has been a breach of contract here.

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 K states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday on a number of occasions. I accept that they may not have been able to take certain holidays. But I've not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreements.

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 K 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 K and the Lender.

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

Mr and Mrs K'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 K; and
2. Mr and Mrs K 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 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 K 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 K.

I acknowledge that Mr and Mrs K 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 K 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 K'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 Properties clearly constituted an investment as it offered Mr and Mrs K 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 K 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 K 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 and Mrs K 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 K and the Lender under the Credit Agreement and related Purchase Agreements 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 K 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 Agreements 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 wasn't an important and motivating factor when Mr and Mrs K decided to go ahead with their purchase. I say that having read and considered Mr K's testimony.

This was compiled by the PR and dated 11 September 2018. It sets out Mr K's recollections of his and Mrs K's entire relationship with the Supplier between 2008 and 2018. As regards their purchase of the Fractional Club at the Time of Sale Mr K says:

"In October 2013, we were cold called by a representative from [the Supplier] *and invited to an information meeting. This again was, in fact, a high pressure sales pitch and the representatives were very persistent we took the agreement out that day. The representatives advised us that there would be excellent availability of holidays but this was not the case. We often had to compromise on dates and/or places to get booked. We were advised that the resorts were exclusive to members but this was not true either. Using google, we could see that you could book that same resorts for similar prices. The representatives advised that the purchase would be an investment and that we could sell it on for a profit. We were advised that the maintenance fees would not go up that much but they have risen considerably. We were given no time alone to consider the terms of the agreement. With regards to the finance agreement, we were given no time alone to consider the terms of the finance agreement. No other loan providers were available and no credit check or affordability check was done. The forms were already filled in and all we had to do was sign."*

I accept that Mr K, in the above, says that the Supplier told him and Mrs K that the purchase would be an investment. But I can't see that this is any more than a description of how the Fractional Club worked – it certainly doesn't suggest that a potential profit was a motivating factor for Mr and Mrs K. And having considered everything Mr K has said, in the round and having regards to the Supplier and the Lender's submission that Mr K wasn't cold called in October 2013 as he recalls, I'm of the view that the motivation to purchase was driven by what Mr and Mrs K understood would be the type and quality of holiday membership would allow them to take going forward compared to their previous points membership.

That doesn't mean they weren't interested in a share in the Allocated Properties. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs K themselves don't persuade me that their purchase was motivated by their share in the Allocated Properties 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 K'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 K 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 K 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 K 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 K 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, given the facts and circumstances of this complaint, I didn't think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs K's Section 75 claims, and I wasn't 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 could see no 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 K's credit relationship with the Lender was unfair to them for reasons relating to the commission arrangements between it and the Supplier.

The Lender responded to the PD to say it agreed with it and had nothing further to add.

The lender didn't respond to my further communication (detailing how I wasn't persuaded that Mr and Mrs K's credit relationship with it was unfair to them for reasons relating to the commission arrangements between it and the Supplier).

The PR responded to the PD to say that it didn't accept it, providing further evidence and comments in support, and responded to my further communication (detailing how I wasn't persuaded that Mr and Mrs K's credit relationship with the lender was unfair to them for reasons relating to the commission arrangements between it and the Supplier) to say it didn't intend to challenge it.

Having received responses, I'm now finalising my decision.

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

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 responses from the PR, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what's fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the PD relate to the issue of whether the credit relationship between Mr and Mrs K and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr and Mrs K as an investment at the Time of Sale.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But they didn't make any further comments in relation to those in their response to my PD. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on the PR's points raised in response.

Section 140A of the CCA: did the Lender participate in an unfair credit relationship?

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

Included in the PR's response to my PD was an oral hearing request. Oral hearings are something that I can direct happen under DISP 3.5.5. However, the Financial Ombudsman Service is set up to decide complaints informally and it's for me as the decision maker to determine what evidence I think I need to determine what's a fair and reasonable outcome to a complaint. Having considered everything, I don't think I need to hold an oral hearing to fairly determine this complaint.

This is because both parties have already provided lengthy submissions. In this case, I've statements from Mr K, other evidence, including the documents from the sale, and full submissions from the PR and the Lender to decide what I think was most likely to have happened. I'm satisfied I'm able to weigh up what Mr and Mrs K said against the available evidence and arguments to determine what I think happened on the balance of probabilities without the need for an oral hearing. And as it's in everyone's interest to resolve this complaint as soon as possible, to grant a hearing at such a late stage would inevitably prolong the resolution of this case.

As I explained in my PD, although I found there was a possibility that the Supplier breached Regulation 14(3) at the Time of Sale, I wasn't persuaded that the evidence suggested that Mr and Mrs K purchased Fractional Club membership in whole or in part down to any breach of Regulation 14(3). And having considered everything afresh I can confirm that I remain of the same view and for the same reasons.

Here, the PR has stated that I've been inconsistent with my approach compared to previous decisions issued by the service, and has provided examples it feels demonstrates this. But my decision is based on consideration of Mr and Mrs K's specific circumstances. Each complaint turns on its own facts; an ombudsman's decision on how one timeshare sale occurred doesn't determine his, or any other ombudsman's, decisions about the facts of other sales at different times to different purchases.

The PR has also reiterated that the judgment handed down in *Shawbrook & BPF v FOS* asserted that the relevant question in this circumstance is whether the breach of regulation 14(3) was a material factor in the decision to purchase, not whether it was the only factor or principal one. It feels that the testimony Mr K has provided demonstrates that this was the case. But, as I explained in my provisional decision, I'm not persuaded from the testimony that Mr and Mrs K have adequately demonstrated that the promise of profit was a motivating factor to their decision to move ahead with the purchase – principal or otherwise.

I accept that within the PR's new submissions Mr K has provided further evidence, stating that based on what the Supplier advised him and Mrs K they viewed their purchase as a *"no-brainer investment"*. However, with this evidence there is a real risk that Mr K's testimony has been coloured by the outcome in *Shawbrook & BPF v FOS* and/or my Provisional Decision. And, on balance, the timing in which this evidence has been provided makes me conclude that I can place little weight on it.

So, ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr and Mrs K's purchasing decision.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr and Mrs K's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mr and Mrs K and the Lender was unfair to them for this reason.

Conclusion

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 K'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 K to accept or reject my decision before 27 February 2026.

Peter Cook
Ombudsman