

The complaint

Mr and Mrs P 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 P purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 24 December 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to trade in 3,500 European Collection points towards buying 3,500 fractional points for which they paid an additional £4,375 (the 'Purchase Agreement') on top of the trade in value of £3,500 given to their 3,500 European Collection points.

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

Mr and Mrs P paid for their Fractional Club membership by taking finance of £4,375 from the Lender (the 'Credit Agreement').

Mr and Mrs P – using a professional representative (the 'PR') – wrote to the Lender on 29 November 2016 (the 'Letter of Complaint') to raise several 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 P's concerns as a complaint and issued its final response letter on 30 January 2017, rejecting it on every ground.

Mr and Mrs P then referred the complaint 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 Investigator thought that the Supplier had marketed and sold Fractional Club membership as an investment to Mr and Mrs P at the Time of Sale in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (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 P 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. It said that the Supplier's sales materials and supporting documentation made clear that Fractional Club membership was not sold as an investment. And that Mr and Mrs P's recollections make clear that the main driver of the purchase was the shorter membership term.

The legal and regulatory context

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

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here. But if either side would like me to confirm what I think that context is, they can let me know in response to this provisional decision.

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.

Having done that, I think that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and/or selling Fractional Club membership to Mr and Mrs P as an investment, which, in the circumstances of this complaint, rendered the credit relationship between them and the Lender unfair to them for the purposes of Section 140A of the CCA.

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, while I recognise that there are a number of aspects to this complaint, it is not necessary to make formal findings on all of them because, even if one or more of those aspects ought to succeed, the redress I am awarding puts Mr and Mrs P in the same or a better position than they would otherwise be in.

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

Having considered the entirety of the credit relationship between Mr and Mrs P and the Lender along with all the circumstances of the complaint, I 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. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements.
4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale.
5. The inherent probabilities of the sale given its circumstances.

6. Where relevant¹, any existing unfairness from a related credit agreement.

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

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

The Lender does not dispute, and I am satisfied, that Mr and Mrs P Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club membership as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But Mr and Mrs P say that the Supplier did exactly that at the Time of Sale – saying, in summary, that they were told by the Supplier that they would see a return on the money that we "invested" – and were promised/guaranteed that they would get back what they paid and a profit because the value of the property they were investing in would 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.

Mr and Mrs P share in the Allocated Property clearly constituted an investment as it offered them the prospect of a financial return – whether, 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 P 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.

¹ There was no related credit agreement in this case.

There is evidence in this complaint 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 P, 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. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr and Mrs P as an investment.

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. And for reasons I'll now come on to, given the facts and circumstances of this complaint, I think the Supplier is likely to have breached Regulation 14(3) of the Timeshare Regulations.

How the Supplier marketed and sold the Fractional Club membership

The Supplier has provided various evidence to show how it sold Fractional Club membership, including that discussed below (which I think is the most relevant in this case).

A Policy and Procedure (sales misrepresentation) document, which included the following:

"[The Supplier] strictly prohibits any forms of Misrepresentation. In this respect, [the Supplier] specifically stresses the importance of representing the [Supplier's] product in line with the following guidelines:

- *[The Supplier] does not represent vacation ownership as an investment.*
...
- *With regards to the presentation of the Fractional product:*
 - *Sales Team members will not represent the Fractional product as an investment*
 - *Sales Team members will not discuss any predictions with regards to the residual value."*

The document went on to say that:

"non compliance of the rules established herein, will lead to the adoption of the relevant disciplinary actions ... including the automatic extinction of the employment relationship by means of a dismissal."

It is likely that the salesperson and sales manager involved with Mr and Mrs P at the Time of Sale signed the Policy and Procedure (sales misrepresentation) document under a statement that said:

"I hereby acknowledge receipt of the present Misrepresentation [Standard Operating Procedure] ... as detailed above."

The Supplier has also provided a copy of its Training Manual, which states on page 53:

"The basis of both products is centered on the experiences clients will enjoy when travelling, neither product is an investment type product and as such it is forbidden when selling to our guests to discuss eventual values or returns."

While this forbids discussion of eventual values or returns it does not forbid describing the product in such a way that might imply it is nevertheless an investment. Nor does it mention that the reason for saying this is because the Timeshare Regulations prohibit the sale or marketing of a timeshare as an investment.

The Training Manual includes an exercise on page 54 that asks the question:

“Why do you think it is important never to present the Fractional ownership club as an investment?”

This question does suggest that salespeople should not present Fractional timeshares as an investment. But no examples are given in terms of what answers are to be expected from trainees. Again, there is no mention of the Timeshare Regulations, nor anything that clearly explains what would constitute a breach of Regulation 14(3).

Looking at these documents, I am satisfied that the Supplier took steps to try and prevent a breach of Regulation 14(3) by its salespeople when selling Fractional Timeshares like Fractional Club membership. And that these steps will have gone some way to reducing the risk of breaches occurring. But the materials are not as explicit as they could be in making salespeople aware of the prohibition in Regulation 14(3), which they do not explicitly refer to.

So, it is not clear to me that a salesperson would've understood why they should not present a fractional timeshare as an investment (the above question is not answered in the Training Manual). Nor that the concept of an investment was clearly defined nor clear guidance provided on what was acceptable.

For example, there are no sales scripts or prescribed wordings that limit how a salesperson could describe a fractional timeshare and specifically the right to a share in the net sale proceeds of the Allocated Property. Nor is there anything that sets out what a salesperson should do if a prospective customer does end up with the impression that Fractional Club membership is an investment in that they could make a financial gain or profit from it.

In *Shawbrook & BPF v FOS*² the judge acknowledged the difficulty in selling a fractional timeshare without breaching Regulation 14(3), where he said at 77:

“I endorse the observation made by Mr Jaffey KC, Counsel for BPF, that, whatever the position in principle, it is apparently a major challenge in practice for timeshare companies to market fractional ownership timeshares consistently with Reg. 14(3) ... Getting the governance principles and paperwork right may not be quite enough.”

The documents referred to above suggest to me that the Supplier may have taken too narrow a view of what constituted selling or marketing a timeshare as an investment. I say this because these documents focus on not presenting the fractional timeshare as an investment in the context of not discussing the residual value of the Allocated Property or the eventual values or returns a customer might receive. I think this left open the possibility that a salesperson might engage in other discussions about this benefit which could cross the line into breaching Regulation 14(3) – even if that was not the intention of the salesperson or the Supplier.

In my opinion, merely suggesting or implying that a customer might make a financial gain (that is, potentially get back more than they paid for Fractional Club membership) would be

² *Shawbrook Bank Ltd, R (On the Application Of) v Financial Ombudsman Service Ltd* [2023] EWHC 1069 (Admin) (05 May 2023) <https://www.bailii.org/ew/cases/EWHC/Admin/2023/1069.html>

enough to breach the prohibition in Regulation 14(3) – even if that financial gain was not quantified.

So, I am not persuaded that these documents are sufficient for me to conclude that it is impossible, implausible or inherently unlikely that Fractional Club membership could have been sold or marketed as an investment at the Time of Sale. That makes it important to consider not only the evidence from the Time of Sale but Mr and Mrs P's recollections of what happened as well.

Mr and Mrs P's recollections (set out in the Letter of Complaint and in a matching statement provided to the Financial Ombudsman Service on 17 July 2023) are the only evidence available that is specific to the sale from someone who was there. And while the sales documents do reflect the Supplier's intention to comply with Regulation 14(3), the sales documents in themselves again do not guarantee that Regulation 14(3) was not breached. Those documents were provided to Mr and Mrs P after they had agreed in principle to make the purchase. So, the disclaimers and statements contained therein may not have been enough to prompt Mr and Mrs P to question what they had been told if that was different to what was shown in the documents.

I am not suggesting that there was a systemic issue that meant Fractional Club membership was sold in breach of Regulation 14(3) in every case. In fact, I am satisfied that a fractional timeshare could have been sold without breaching Regulation 14(3). But this decision is specific to the sale of Fractional Club membership to Mr and Mrs P at the Time of Sale.

Was the credit relationship between the Lender and the Consumer rendered unfair?

Having found 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 P 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 that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs P 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.

Mr and Mrs P's recollections and the circumstances of the sale

I do not think that I should disregard Mr and Mrs P's recollection of events – which it seems informed the Letter of Complaint (albeit no written statement was provided until much later). But given their statement matched what was said in the Letter of Complaint, it is not the case that Mr and Mrs P's recollections have changed or that their later statement undermined or contradicted what was in the Letter of Complaint. Nor do I think that the other evidence in this case is sufficient for me to conclude that Mr and Mrs P are mistaken in their recollections of Fractional Club membership being sold or marketed to them as an investment.

In this case I note that the sale was a point-for-point upgrade from European Collection membership to Fractional Club membership. While Mr and Mrs P retained some European Collection points after the purchase, the main benefits to Mr and Mrs P from the transaction were:

1. A shorter membership term in relation to the points exchanged/purchased. At the end of the membership term Mr and Mrs P would no longer have any liability in terms of paying annual fees for those Fractional Points – whereas if they had not made the purchase the equivalent European Collection Points (and the related annual fees) would've continued until 2054 (but would not have passed onto their beneficiaries on their deaths as they also say they were told and which they say was partly why this benefit was important to them).
2. A share in the net proceeds when Allocated Property is sold at the end of the membership term (which could be more than they paid for it).

While Mr and Mrs P's recollections indicate that they were attracted to the purchase for both of these benefits, I think the prospect of making a profit on what they paid for Fractional Club membership was material to their decision to purchase. They say that what they were told about what they would get back on the sale of the Allocated Property (that is, that it would be a profit) "*was the clincher*" as far as they were concerned. And I'm persuaded that if they didn't hope or expect to make a profit from the purchase they would not have proceeded with the purchase.

That doesn't mean Mr and Mrs P were not interested in the shorter membership term. Their own recollection demonstrates that they quite clearly were. And that is not surprising given this was one of the main benefits of the purchase. But as Mr and Mrs P say (plausibly and persuasively in my view) that Fractional Club membership was marketed and sold to them at the Time of Sale as something that offered them more than just holiday rights and a shorter membership term, on the balance of probabilities, I think their purchase was motivated by their share in the Allocated Property and the possibility of a profit as that share was one of the defining features of membership that marked it apart from their existing membership. And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision they ultimately made. And as they faced the prospect of borrowing and repaying a substantial sum of money while subjecting themselves to long-term financial commitments, had they not been encouraged by the prospect of a financial gain from membership of the Fractional Club, I'm not persuaded that they would have pressed ahead with their purchase.

The Lender's response to our Investigator's assessment

I have considered the Lender's response to our Investigator's assessment. The Lender is of the opinion that Mr and Mrs P entered the Purchase Agreement because they wanted the shorter membership term and that any breach of Regulation 14(3) would've made no difference to their decision. But, for the reasons explained above, I have reached a different conclusion, as did our Investigator. And the Lender's comments do not persuade me that upholding this complaint is not the most fair and reasonable outcome in all the circumstances of this case, including all the evidence I have seen and considered.

Conclusion

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Mr and Mrs P under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A. And with that being the case, taking everything into account, I think it is fair and reasonable that I uphold this complaint.

Putting things right

Fair Compensation

Having found that Mr and Mrs P would not have agreed to purchase Fractional Club membership at the Time of Sale were it not for the breach of Regulation 14(3) of the Timeshare Regulations by the Supplier (as deemed agent for the Lender), and the impact of that breach meaning that, in my view, the relationship between the Lender and the Consumer was unfair under section 140A of the CCA, I think it would be fair and reasonable to put them back in the position they would have been in had they not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr and Mrs P agree to assign to the Lender their Fractional Points or hold them on trust for the Lender if that can be achieved.

Mr and Mrs P were existing European Collection members, and their membership was partially traded in against the purchase price of Fractional Club membership. Under their European Collection membership, they had 9,000 European Collection Points and 7,000 Fractional Points prior to the Time of Sale, and 3,500 European Collection Points and 10,500 Fractional Points after entering the Purchase Agreement. And, like Fractional Club membership, they had to pay annual management charges as a European Collection member. So, had Mr and Mrs P not purchased Fractional Club membership, they would have always been responsible to pay an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Mr and Mrs P from the Time of Sale as part of their Fractional Club membership should amount only to the difference between those charges and the annual management charges they would have paid as ongoing European Collection members.

So, here's what I think needs to be done to compensate Mr and Mrs P with that being the case – whether or not a court would award such compensation:

- (1) The Lender should refund Mr and Mrs P's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.
- (2) In addition to (1), the Lender should also refund the difference between Mr and Mrs P's Fractional Club annual management charges paid after the Time of Sale and what their European Collection annual management charges would have been had they not purchased Fractional Club membership (where the charges after the Time of Sale were higher).
- (3) The Lender can deduct:
 - i. The value of any promotional giveaways that Mr and Mrs P used or took advantage of.

No deduction for the market value of holidays taken is necessary in this case, since before and after the Time of Sale Mr and Mrs P had 16,000 European Collection and/or Fractional Points, which means their holiday purchasing power did not change.

(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)

- (4) Simple interest** at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.
- (5) The Lender should remove any adverse information recorded on Mr and Mrs P's credit files in connection with the Credit Agreement reported within six years of this decision.
- (6) If Mr and Mrs P's Fractional Club membership is still in place at the time of this decision, as long as they agree to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of their Fractional Club membership.

*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr and Mrs P took using their Fractional Points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect their usage.

**HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give the consumer a certificate showing how much tax it's taken off if they ask for one.

My final decision

For the reasons I've explained, I uphold this complaint.

I direct Shawbrook Bank Limited to pay fair compensation to Mr and Mrs P as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 16 January 2026.

Phillip Lai-Fang
Ombudsman