DRN-6050865

The complaint

Mrs J'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 her 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

Mrs J was a member of a timeshare provider (the 'Supplier') – having previously purchased a timeshare from it. But the product at the centre of this complaint is her membership of a timeshare that I'll call the 'Fractional Club' – which she bought on 26 May 2014 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 1,700 fractional points at a cost of £4,227 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mrs J 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 her membership term ends.

Mrs J paid for her Fractional Club membership by taking finance of £4,227 from the Lender (the 'Credit Agreement').

Mrs J – using a professional representative (the 'PR') – wrote to the Lender on 5 September 2018 (the 'Letter of Complaint') to raise her 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.

It appears that the Lender didn't respond to the complaint, so the PR then referred it to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits. A second assessment was subsequently issued, which also rejected the complaint.

Mrs J disagreed with the assessments and asked for an Ombudsman's decision – which is why it was passed to me. I issued a provisional decision explaining why I didn't intend to uphold the complaint. I asked for any further submissions to be provided before 1 January 2026. The Lender responded and said it had no comments to add. No response was received from the PR.

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

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]

The FCA's Principles

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.

And having done that, I remain of the opinion that this complaint should not 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.

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

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

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 Time of Sale, because Mrs J was told that the only way to get out of her existing Timeshare was to buy into Fractional points, as these would be sold in the near future and she would get a share of the profits from the sale.

While I accept it's *possible* that Fractional Club membership was misrepresented at the Time of Sale in the way Mrs J has suggested, I don't think it's *probable*. She's given little to none of the colour or context necessary to demonstrate that the Supplier made false statements of existing fact and/or opinion. And as there isn't any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for this reason, I don't think it was.

Mrs J has also suggested that Fractional Club membership wasn't as exclusive as she was led to believe it would be. But the contemporaneous documents I've seen relating to the other accommodation available through the membership, do not say that the resorts in the Supplier's portfolio were exclusive to members. Resorts owned by the Supplier were described as "mixed use", while other resorts were described as resorts in which the Supplier had "secured accommodation…under its control" or which were "available through [our] partnerships with other resorts". None of this appears to state or imply that the resorts within the portfolio could only be booked by members. While I've no doubt the Supplier would have taken the opportunity to promote the quality of its resorts and services, I've not seen evidence that it made specific false statements about them.

So, while I recognise that Mrs J - and the PR - 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 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.

Mrs J says she was told by the Supplier that it would be easier to book weeks with Fractional Club membership which she says turned out to be untrue. On my reading of the complaint, she seems to be suggesting that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

Yet, 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 Mrs J, states that the availability of holidays was/is subject to demand. I accept that she may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

I'm also hindered in applying any weight to the submissions made on Mrs J's behalf as I don't have direct testimony from her, in her own words, as to the difficulties she had in booking accommodation. I've simply been presented with a submission by her PR with no evidence to support it, such as direct testimony from Mrs J. And in my opinion, it's vital in a case such as this to have Mrs J's testimony as to what happened, as it allows me to assess the credibility and consistency of the submissions made and to clearly understand what was supposedly said, and to know the context in which it was apparently said.

After the investigator issued their view, the PR has also said on Mrs J'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 Mrs J nor the PR have said, suggested or provided evidence to demonstrate that she is no longer:

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

So, from the evidence I have seen, I do not think the Lender is liable to pay Mrs J 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 an unfair credit relationship?

I've already explained why I'm not persuaded that Mrs J's Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale, or that it breached the contract. Mrs J's letter of complaint is very brief and specifically references a complaint in respect of Section 75 of the CCA. But the complaint letter also references an allegation that she was told she would get a share of the profit from the sale of her Fractional Club membership, when it was sold. And although not specifically articulated as such, my understanding is that the argument is being made on Mrs J's behalf, that the Fractional Club membership was sold to her as an investment which would provide her with a profit when it was sold. So, I think a complaint of this nature needs to be considered under Section 140A of the CCA.

Section 140A says a court may make an order if it thinks the relationship between a creditor and a debtor is unfair to a debtor. It's deliberately framed in wide terms, and a finding of unfairness can flow from something done on the creditor's behalf in connection with a 'related agreement'. Here, the purchase agreement is a 'related agreement'. And, by virtue of section 56 of the CCA, the Lender is legally answerable for the Supplier's actions.

Having considered the entirety of the credit relationship between Mrs J 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 in relation to

Fractional Club membership, 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; and, when relevant
6. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationship between Mrs J and the Lender given her circumstances at the Time of Sale.

I have already explained why I don't think the concerns raised by Mrs J succeed in the context of her claims under Section 75 of the CCA. And for the reasons I've already given, I don't think those concerns succeed in the context of any claim of unfairness in respect of Section 140A either. So, I'll now consider the main point that the PR has raised, which is that Fractional Club membership was sold in essence, as an investment that would provide Mrs J with a profit.

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

The Lender does not dispute, and I am satisfied, that Mrs J's 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 the PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mrs J was told by the Supplier that Fractional Club membership was an investment that would provide her with a profit.

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 Property clearly constituted an investment as it offered Mrs J the prospect of a financial return – whether or not, like all investments, that was more than what she 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 Mrs J 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 her as an investment, i.e.

told her or led her to believe that Fractional Club membership offered her 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 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 Mrs J, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mrs J 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 Mrs J 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 Mrs J 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 Mrs J and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

As I've already explained, direct testimony from Mrs J is vitally important to help me to assess the credibility and consistency of the submissions made and to clearly understand what was supposedly said, and to know the context in which it was supposedly said. It's also important for me to be able to see that the Letter of Claim and any subsequent submissions genuinely reflect Mrs J's testimony. And for the avoidance of any doubt, a submission made in a complaint letter doesn't constitute evidence.

Unfortunately, I don't have any direct testimony from Mrs J. And given these concerns I simply don't have the evidence to support and corroborate the allegation that Fractional Club membership was sold to Mrs J as an investment, and importantly that this was a primary motivation for her purchasing it. As a result, I'm simply unable to make a finding that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

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 Mrs J Section 75 claims.

I am not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement and related Purchase Agreement that was unfair to her 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 her.

My final decision

For the reasons I've set out above, I have decided not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 4 February 2026.

Simon Dibble
Ombudsman