

### The complaint

Ms G and Mrs H's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA').

### What happened

Ms G and Mrs H were existing members of a timeshare with a third-party timeshare provider, having bought a number of products over time.

However, the product at the centre of this complaint is their membership of a timeshare (the 'Fractional Membership') which they bought from a timeshare provider (the 'Supplier') on 19 October 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy the right to occupy a named apartment during a set week each year (apartment 403 in week 52), and after trading in their existing week (apartment 300 week 43) they ended up paying £7,894 (the 'Purchase Agreement') for this Fractional Membership.

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

Ms G and Mrs H paid for their Fractional Membership by making a down-payment, with the remaining £6,000 on finance from the Lender (the 'Credit Agreement').

Ms G and Mrs H wrote to the Lender on 30 January 2017 (the 'Letter of Complaint'). They said, in summary, that the Supplier had talked them into buying the Fractional Membership as they were told it was an investment which would double its money when sold in three years.

The Lender dealt with Ms G and Mrs H's concerns as a complaint and issued its final response letter on 17 March 2017, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service by a professional representative (the 'PR'). It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

The PR disagreed on Ms G and Mrs H behalf, sent a comprehensive response, and asked for an Ombudsman's decision.

While the complaint was waiting for allocation to an Ombudsman, it was reviewed by a second Investigator. Although not set out in this way, the Investigator thought that Ms G and Mrs H were in effect making a complaint under Section 140A of the CCA, because they were saying that the Fractional Membership had been sold by the Supplier in a way that breached Regulation 14(3) of the 'Timeshare Regulations'<sup>1</sup> meaning that their credit relationship with the Lender had been rendered unfair.

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<sup>1</sup> The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010

So, having looked at everything that had been submitted, the second Investigator also considered whether there had been a material breach of Regulation 14(3) of the Timeshare Regulations by the Supplier at the Time of Sale. But having done so, she also rejected the complaint on its merits.

In this second assessment the Investigator said:

*"In response [to the first Investigator's view], [Ms G and Mrs H]'s representative sent us a copy of a letter it had sent the Business which expanded on its earlier claim that the membership was sold as an investment in breach of Regulation 14(3). It said this rendered the credit relationship unfair for the purposes of Section 140A of the CCA. The letter stated the following:*

- *The Supplier positioned membership as an investment, which would have breached Regulation 14(3) because:*
  - *"Our client was enticed into an investment scheme asset-backed Timeshare property called "Fractional Ownership" They were originally advised they could sell at a profit in 2030 which is listed on the owner certificate provided to you in our previous correspondence."*
  - *"...our clients were advised there would be no maintenance fees associated with their fractional ownership as the vendor advised these fees would be covered by the rental program"*
- *And the Supplier's breach of Regulation 14(3) led to an unfair credit relationship because:*
  - *"Our clients felt that there were no options left and given a chance to own a little piece of paradise and to retain an investment for profit they felt they had no other option but to invest further into the scheme or walk away with debt a current timeshare product that was not in demand and tied into a contract which would see them paying maintenance fees for the next 54 years."*

*I've seen that my colleague also considered other complaint points raised by [Ms G and Mrs H], but their representative's response has largely been limited to the question of whether the Supplier breached Regulation 14(3) during the sale. The other points raised in response to the view were that the sales documents didn't make it clear that if [Ms G and Mrs H] defaulted on the loan, the investment would be confiscated by the resort. And that the property was sold by the Supplier to Hoima Hotel.*

*Based on this, I assume that my colleague's conclusions on matters not raised following the view aren't in dispute, and I've only considered the breach of Regulation 14(3), the impact of defaulting on the loan and the sale to Hoima Hotel, in the rest of this view.*

#### Did the Supplier breach Regulation 14(3) of the Timeshare Regulations?

*I have submissions from [Ms G and Mrs H]'s representative in the form of a letter of claim dated 30 January 2017 and a further letter dated 19 February 2024, in which the representative sets out what [Ms G and Mrs H] were supposedly told during the sale and their reasons for entering the contract. I appreciate this information may have been collected during a conversation with [Ms G and Mrs H] but, crucially, neither I nor the Business appear to have been provided with [Ms G and Mrs H]'s first-hand testimony. So I don't know the extent to which the letters reflect [Ms G and Mrs H]'s recollections. I also don't know precisely what was said or the context in which it was said.*

*In addition to the above, having reviewed the available paperwork, some of which was signed by [Ms G and Mrs H], I note that the Supplier doesn't describe the Membership as an*

*'investment' or give details of the amount a prospective purchaser, such as [Ms G and Mrs H], might expect to get back at the end of the membership term.*

*On balance, I've not seen sufficient evidence to conclude that the timeshare was marketed or sold to [Ms G and Mrs H] as an investment in breach of Regulation 14(3).*

*The impact of defaulting on the loan*

*[Ms G and Mrs H]'s representative also said that it wasn't explained to [Ms G and Mrs H] that should they default on the loan, the investment would be confiscated by the resort.*

*As above, without first-hand evidence from [Ms G and Mrs H], I don't really know what was said during the sale. I've also not been able to review the sales documents as these haven't been provided. Based on my knowledge of working similar complaint, non-payment of Management Charges or other monies could impact the Membership. But I've not seen any evidence on this complaint, or others, that defaulting on the loan would lead to the Membership being confiscated.*

*Sale to Hoima Hotel*

*[Ms G and Mrs H]'s representative said that the Supplier has sold the property to Hoima Hotel and they won't honour the agreement to sell the property which means [Ms G and Mrs H] have no comeback on their investment.*

*The property was owned by Trustees and not the Supplier so it's not clear the extent to which the property has new owners or what impact that has on [Ms G and Mrs H]'s Membership. Neither [Ms G and Mrs H] or their representative have said, suggested or provided evidence to demonstrate that they are no longer:*

1. *A member of the Fractional Club*
2. *Able to use their Membership to holiday in the same way as they could initially*
3. *Entitled to a share in the net sales proceeds of the property when their Membership ends*

*I understand that [Ms G and Mrs H] may fear that, when the time comes for the Allocated Property to be sold, it either won't be sold, or they will not receive their share of the sales proceeds. However, it would seem that any breach of contract (if that occurs) lies in the future and is currently uncertain.*

*Conclusion*

*Given all of the facts and circumstances of this complaint, I don't think the credit relationship between the Business and [Ms G and Mrs H] was unfair to them for the purposes of Section 140A. And as I've not seen any other reason to hold the Business responsible for anything that might have gone wrong, I don't think this complaint ought to be upheld."*

The PR, on Ms G and Mrs H's behalf, did not accept this outcome. It said, in summary:

- There was a clear breach of Regulation 14(3).
- The Supplier's assurances regarding the absence of maintenance fees due to the expected rental income were misleading and were fundamental to their decision to purchase.
- Ms G and Mrs H were enticed into the purchase by the impression that they were participating in an asset-backed profitable scheme.
- Ms G and Mrs H were not informed that defaulting on the loan would lead to their membership being forfeited.
- The sale of the property to a third-party continues to cause concerns about their

membership rights and their ability to realise any benefit or usage as originally guaranteed.

As no agreement could be reached the matter has come to me for a decision.

### **The provisional decision**

Having considered everything that had been submitted, I didn't think Ms G and Mrs H's complaint ought to be upheld. I set out my initial thoughts on the merits of their complaint in a provisional decision (the 'PD'). In the PD I said:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*And having done that, I do not currently think this complaint should be upheld, for broadly the same reasons as the second Investigator.*

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

*It seems that, in addition to the alleged breach of Regulation 14(3) which I will address later in this decision, 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 Ms G and Mrs H 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;*
2. *The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
3. *Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; and*
4. *The inherent probabilities of the sale given its circumstances.*

*I have then considered the impact of these on the fairness of the credit relationship between Ms G and Mrs H and the Lender.*

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

*Ms G and Mrs H's complaint about the Lender being party to an unfair credit relationship is made for several reasons, including:*

- *The Fractional Membership was misrepresented to them by the Supplier;*
- *There is a term in the contractual documentation which is unfair; and*

- *The property has been sold to a third-party.*

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

*A material and actionable misrepresentation is an untrue statement of existing fact, made by the Supplier, that induces a consumer into entering a contract. So, in Ms G and Mrs H's case, for me to say there had been a pre-contractual misrepresentation by the Supplier, I would have to be satisfied, on the balance of probabilities, that they were told something that was factually untrue, and that this induced them to make the purchase at the Time of Sale.*

*It is not entirely clear from the PR's submissions what misrepresentations were allegedly made by the Supplier at the Time of Sale, but it appears that it is saying that Ms G and Mrs H were given some sort of assurance by the Supplier that they would receive rental income from the property which would negate the need to pay annual maintenance fees. However, I have seen nothing to suggest that this was said to Ms G and Mrs H. They have said nothing in this regard, so I am not persuaded that this representation was made at the Time of Sale.*

*The PR has also said that the Fractional Membership was marketed to Ms G and Mrs H as a profitable scheme, when this was untrue. However, telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. After all, a share in an allocated property was, by its very nature, an investment. And I have seen nothing which persuades me that any potential profit was set out by the Supplier as a fact when such an assertion would be impossible to stand by, given the inevitable uncertainty around property values some way into the future.*

*The PR also says that there is a contractual term governing the requirement to maintain the loan repayments and the consequences of not meeting those which was an unfair contract term.*

*For me to conclude that any term caused any unfairness to Ms G and Mrs H in their credit relationship with the Lender, I would have to see that the term was applied in a way that was unfair to them. Yet, having considered everything, it seems unlikely to me that the term cited by the PR has led to any unfairness in the credit relationship for the purposes of Section 140A of the CCA. I say that because I have seen no evidence that this particular term even exists, nor that any similar term has been actually operated against Ms G and Mrs H, let alone unfairly.*

*And like the second Investigator, I cannot see that the change in ownership of the properties concerned has caused there to be a breach of contract and/or any unfairness to their credit relationship with the Lender. I think this because neither Ms G and Mrs H nor the PR have said, suggested or provided evidence to demonstrate that they are no longer:*

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

*Overall, therefore, I don't think that Ms G and Mrs H'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 Ms G and Mrs H. And that's the suggestion that Fractional 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***

As I've already said, a share in the Allocated Property clearly constituted an investment as it offered Ms G and Mrs H 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 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 Membership. They just regulated how such products were marketed and sold.*

*To conclude, therefore, that Fractional Membership was marketed or sold to Ms G and Mrs H 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 Membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.*

*And there is competing evidence in this complaint as to whether Fractional 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 the Fractional Membership as an 'investment' or quantifying to prospective purchasers, such as Ms G and Mrs H, 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, statements signed by both of them which set out that the membership should not be regarded as a financial investment.*

*But on the other hand, I acknowledge that Ms G and Mrs H, in their letter of complaint, say that the sales representative positioned Fractional Membership as an investment. So, I accept that it's equally possible that Fractional Membership was marketed and sold to Ms G and Mrs H 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.*

### ***Would the credit relationship between the Lender and Ms G and Mrs H have been rendered unfair to them had there been a breach of Regulation 14(3) of the Timeshare Regulations?***

*Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach (if there was one) had on the fairness of the credit relationship between Ms G and Mrs H 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 Ms G and Mrs H 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, I am simply not persuaded that the prospect of a financial gain from Fractional Membership was an important and motivating factor when Ms G and Mrs H decided to go ahead with their purchase. I'll explain.*

*The only evidence in this case that can be described as consumer testimony is the original letter of complaint that Ms G and Mrs H wrote to the Lender on 30 January 2017. As far as is relevant to this part of the complaint, this said:*

*"On 5/11/2015 we were talked into buying another week as we were told that we were making a good investment as it would be sold within three years and we would double our investment which was £9,000 , again using your finance."*

*I appreciate that the subsequent letter sent by the PR to the Lender (as set out by the second Investigator) provides information regarding the complaint under the CCA, but this is not testimony from Ms G and Mrs H. It does not set out their first-hand recollections of what happened at the Time of Sale, nor their motivation to make the purchase. And that is important here. If I am to find that a breach of Regulation 14(3) was material, I need to be persuaded that Ms G and Mrs H's motivation to purchase Fractional Membership at the Time of Sale was because it was an investment, with the possibility of a profit at the end.*

*But when considering what Ms G and Mrs H said in their original letter, although it comes directly from them, I do not feel I can place much weight on what they have said. I think this because there are significant mistakes in it which make me question the reliability of their recollections. For example, both the date of the sale and the price of the membership are wrong. Indeed the price - £9,000 – was in fact the price they paid for their previous membership. And the Allocated Property was not due to be sold until 2030, not in three years time. I think that had it been bought as an investment, the sale date when their share would be due, would have been important to them, so they would have likely known when that would be. And as I've said, Ms G and Mrs H had made several purchases from both this and a different timeshare provider over time, and given the errors they have made in the Letter of Complaint, I think there is a significant risk that their memories may have conflated two or more different sales, so are unreliable here.*

*So, in the absence of testimony that I feel able to rely on, I have gone on to look at their circumstances and what they received when they made this purchase of the Fractional Membership.*

*As I've said, Ms G and Mrs H were existing members with this particular Supplier, and they traded in their existing membership at the Time of Sale, meaning they got a different apartment and guaranteed week's accommodation. And it appears their new week was week 52, as opposed to week 43.*

*So, on the balance of probabilities, I think the reason they made this particular purchase of Fractional Membership was most likely the holidays that it could provide.*

*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 I'm not persuaded, by either the evidence submitted or by what Ms G and Mrs H have said, that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, even if there was a breach of Regulation 14(3) by the Supplier, I don't think this*

*would have been material to the decision they ultimately made.*

*On balance, therefore, even if the Supplier had marketed or sold the Fractional Membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Ms G and Mrs H's decision to purchase Fractional 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 do not think the credit relationship between Ms G and Mrs H and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).*

### **Section 140A: Conclusion**

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*Given everything that has been submitted, and the circumstances at the Time of Sale, I'm not persuaded that the credit relationship between Ms G and Mrs H and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis."*

### **The responses to the provisional decision**

The Lender accepted the PD with no further comment. The PR, on behalf of Ms G and Mrs H did not accept it, and made further submissions. In summary it said the credit relationship between Ms G and Mrs H and the Lender was unfair because:

- There had been a breach of Regulation 14(3) of the Timeshare Regulations as the Fractional Membership had been marketed to them with the promise of a financial gain.
- The minor errors in the Letter of Complaint do not undermine its reliability. The core claim of explicit profit assurances is consistent and contemporaneous.
- Previous decisions by this Service have found such a breach rendered the associated credit relationship unfair.
- The breach of Regulation 14(3) was material to their purchasing decision because:
  - The trade-in of an existing membership shows they sought added value, not mere continuity. The "investment element" (share in Allocated Property) was the differentiator.
  - There is no evidence to suggest they would have bought the membership without the profit 'assurances'.
- Default/Forfeiture Omission: Ms G and Mrs H have confirmed there was no disclosure that a loan default would result in membership forfeiture.
- Maintenance fees misrepresentation: The assurance of "no fees via rentals" was a key inducement, and the ongoing charges prove deceit.
- Hoima Hotel Sale: This action heightens the risk to Ms G and Mrs H's "share" and undermines the previous assurances they had been given.

As the deadline for further submissions has now passed, the complaint has come back to me for further consideration.

### **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.

The PR has not submitted any new evidence, it has just set out why it disagreed with the PD. It has also made reference to some previous ombudsman decisions that it says were upheld in similar circumstances to Ms G and Mrs H's complaint. But those decisions were made on their own merits. I make this decision on the particular circumstances and evidence in this case.

And having reconsidered everything in light of the submissions by the PR, I remain satisfied that this complaint should not be upheld, for the reasons I set out in the PD.

The PR has again said that there is a contractual term governing the requirement to maintain the loan repayments, and the consequences of not meeting those would result in the forfeiture of their membership. It maintains this is an unfair contract term. But it has provided no evidence that this term actually exists, and I have seen nothing to suggest that it does. And in any case, as I said in the PD, for me to conclude that any term caused any unfairness to Ms G and Mrs H in their credit relationship with the Lender, I would have to see that the term was applied in a way that was unfair to them. But I have seen no evidence that this particular term, nor any similar term, has been actually operated against Ms G and Mrs H, let alone unfairly.

The PR has said that the errors in Ms G and Mrs H's initial Letter of Complaint were minor and did not undermine its reliability when determining if the membership was sold to them as an investment. But I don't agree. I think the errors relating to the price and term of the membership, which were significant factors in both how the membership worked and whether it was sold as an investment, mean I do not feel able to place much, if any, weight on what they have said.

And I don't agree with the PR's assertion that the 'trade in' showed they sought to add value to their membership. As I've said, the trade in provided Ms G and Mrs H an upgrade to their holiday week – they originally had week 43, and gained by getting week 52.

So I am not persuaded by the evidence in this complaint that they made the purchase of the Fractional Membership for the potential profit they could make from the sale of the Allocated Property. For the reasons I set out in the PD, I think it is likely that they bought the membership for the holidays it could provide, and they would have probably bought it even if there had been a breach of Regulation 14(3) of the Timeshare Regulations when it was sold.

As such, given everything that has been submitted, and the circumstances at the Time of Sale, I'm not persuaded that the credit relationship between Ms G and Mrs H and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. So I don't think it would be fair or reasonable that I uphold this complaint on that basis.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G and Mrs H to accept or reject my decision before 2 February 2026.

Chris Riggs  
**Ombudsman**