DRN-6060282

The complaint

Mr and Mrs K'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').

Background to the Complaint

Mr and Mrs K purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 17 August 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 12,000 fractional points at a cost of £7,800 (the 'Purchase Agreement').

Prior to the Time of Sale, Mr and Mrs K had purchased three different memberships with the Supplier, the last of which gave them 6,500 points in its European Collection, which could be used to book holiday accommodation. They retained these points in addition to the 12,000 fractional points.

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 a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr and Mrs K paid for their Fractional Club membership by taking finance of £7,800 from the Lender (the 'Credit Agreement').

Mr and Mrs K – using a professional representative – wrote to the Lender on 14 March 2018 to raise a number of different concerns, and it enclosed another letter that it sent to the Supplier on the same date (jointly, the 'Letter of Complaint'). 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 1 April 2019, rejecting it on every ground.

The first professional representative is no longer trading and Mr and Mrs K are now represented by a different professional representative (the 'PR').

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

I issued my provisional findings to both parties on 4 December 2025.

In my provisional decision, I first set out the legal and regulatory context as follows:

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 I would add that the following regulatory rules/guidance are also relevant:

<u>The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance</u>

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]

<u>The FCA's Principles</u>

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

I then set out my provisional findings as follows:

"I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I do not currently think this complaint should be upheld.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

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

Mr and Mrs K's complaint about the Lender being party to an unfair credit relationship was made for several reasons.

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 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; and*
5. *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 Mr and Mrs K and the Lender.

The Supplier's alleged misrepresentations at the Time of Sale

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

(1) *told by the Supplier that Fractional Club membership had a guaranteed end date after 15 years, when that was not true.*
(2) *told by the Supplier that they were buying an interest in a specific piece of "real property" when that was not true.*
(3) *told by the Supplier that Fractional Club membership was an "investment" when that was not true.*
(4) *told by the Supplier that the resorts were exclusive to its members when that was not true.*

The words and/or phrases allegedly used by the Supplier to misrepresent Fractional Club for the reason given in point (1) were set out by the PR1 in the Letter of Complaint, and they were limited to: "that the Fractional Agreement would be sold in 15 years' time.."

The PR says that such a representation was untrue as the sale date was only a proposed date, and that there is no guarantee that any sale will result at all, leaving prospective members to pay their annual management charge for an indefinite and unspecified period.

However, I cannot see why the phrase above would have been untrue at the Time of Sale even if it was said. It seems to me to reflect the main thrust of the contract Mr and Mrs K entered into. And I can see the Supplier made Mr and Mrs K aware that the sale might not take place on the proposed sale date in the document titled "Customer Compliance Statement/Declaration to Treating Customers Fairly":

"We understand that the Property referenced on our Purchase Agreement will be sold as soon as possible on or after the Proposed Sale Date. However we realise that it may not be possible to source a buyer immediately, and that in the event that the sale is ejected on or after the Proposed Sale Date, we will be required to pay our Dues each year until the Property is sold."

So, I do not think that the possibility that the sale of the Allocated Property might not happen immediately after the proposed date of sale renders the representation above untrue. And I am not persuaded that the representation above constituted a false statement of fact even if it was made.

As for points (2) and (3), neither of them strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue – nor was it untrue to tell prospective members that they would receive some money when the allocated property is sold. After all, a share in an allocated property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give prospective members that interest, it did not change the fact that they acquired such an interest.

And as for point (4), Mr and Mrs K were existing customers of the Supplier and had previously used their memberships to stay at the Supplier's resorts. As such, I think they would likely have known that the resorts were not exclusive to members.

So, while I recognise that Mr and Mrs K and the PR have concerns about the way in which Fractional Club membership was sold by the Supplier, I'm not persuaded that there were any misrepresentations at the Time of Sale. And that means that I don't think that the relationship between Mr and Mrs K and the Lender was rendered unfair as a result of any alleged misrepresentations by the Supplier.

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

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

The PR also alleges that the Supplier acted unfairly under Schedule 1 of the CPUT Regulations. But given the limited evidence in this complaint, I am not persuaded that the Supplier did.

In addition, the PR also says that:

1. *the right checks weren't carried out before the Lender lent to Mr and Mrs K.*
2. *Mr and Mrs K were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.*
3. *the annual maintenance fees increased above the rate of inflation.*

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 am 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 did not want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not 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.

I have not seen any evidence from either party to support Mr and Mrs K's allegation that the maintenance fees increased at the rate they say they did, or any evidence to show me that they were likely to have been told the fees would not increase by more than the rate of inflation. As Mr and Mrs K increased the total number of points they owned by 12,000 through purchasing the Fractional Club membership, I expect the fees did increase significantly following the purchase. So, from the information provided to me, I am not satisfied that Mr and Mrs K were told by the Supplier that the annual maintenance fees would only increase with the rate of inflation, or that this has caused an unfairness.

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

The Lender does not dispute, and I am satisfied, that Mr and Mrs K'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 and Mr and Mrs K say that the Supplier did exactly that at the Time of Sale – saying, in summary, that they were told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

A share in an Allocated Property 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 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 K as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the 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 Mr and Mrs K, 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 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 is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

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

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the 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 Agreement as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr 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 Agreement and the Credit Agreement is an important consideration.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mr and Mrs K decided to go ahead with their purchase. I will explain why I have reached that conclusion.

Mr and Mrs K's first representative shared a copy of an email from Mr K that he sent in response to an email it sent him on 14 February 2018. I was not provided with a copy of the representative's email, and I cannot see when Mr K's email was sent. In his email, Mr K begins by expressing frustration with the claim process. He says the following about the Fractional Club purchase:

“Our Timeshare, Points or Fractional contract were mis-sold and we were pushed into “trading” or “upgrading” to a Points, Floating Week or Fractional ownership that are null & void which have ended up costing a lot more in maintenance fees. We have had high, fast-increasing maintenance fees concerns about being locked into long-term contracts.

We were pressured into changing into fractional which again turned out to be a mistake and the management fees have risen. We feel we have been continually lied to and mis-sold.

We were promised it would be an investment. Maintenance fees have increased greater than inflation. Promised that we would be able to exit at any time. I don’t remember being given a cooling off period. Signed purchase agreement on the day. Paid deposit on the day of purchase. Not told maintenance fees would increase annually.

Yes we did feel pressured. We were told there were lots of places we could travel [to] and it would be cheaper than via the travel agents, it would be an investment. We were not told about management fees being increased so much each year. I don’t believe we were given the full facts and implications when we purchased the points and the sales people were just trying to make the sale and not tell the truth.

We would never have entered into this agreement had we known. We have used the timeshare but have found it very difficult to get the resort when we wanted. Had we known about this we would never have purchased the timeshare. We feel that it was not explained to [us] in correct terms and that there was a great deal of pressure to complete the transaction there and then, and we believe that the product was mis-sold to us.”

As I have not been shown the email that Mr K was replying to, I cannot be sure of the context in which this email was written. But in any case, Mr K says he was told the Fractional Club was an “investment” in the context of being able to take cheaper holidays in lots of different places. He does not say anything about what the Supplier told him and Mrs K about the Allocated Property or any potential profit from its sale.

I have also seen another email that was apparently sent to the first representative. There is no name on the email, or any indication of the date it was sent, but I have no reason to doubt the PR when it says that the email was written by Mr K. In this email, Mr K says the following:

“Our timeshare was originally bought in 2008 at [Resort Name], Florida, USA on finance.

In 2011 we went on an [third-party] exchange in Portugal where we were hounded into going into the sales office, and were told that the unit that we had was not the best because we are not members and were told to become members to get the best rooms for our disabled children. We were bamboozled with facts and figures that all sounded good so we joined the club select program. We did not know how to use or access it so went on another update and ended up buying into [the Supplier] for points because we were told again that we needed to be members to get what was promised first. We ended up being told to invest in [Fractional Club] to get our money back in 15 years.

We were invited to a presentations and was told that it would only be an update and we would not be sold anything if we attended, but the presentations were excessive and that lasted 5 hours plus. We were told that we could lose holidays and would not be able to book if we did not attend.

We were not told that the price would increase and we would be asked to purchase something.

We were given incentives to purchase i.e free holiday[.]

We were told that it was a financial investment and we could stop management fees liability sooner than if we stayed in the original or existing ownership.

They brushed over topics to do a whole bunch of math to confuse us. When we said we didn't think we were interested another sales rep came out to try push a little harder.

There was a clear game between the rep and the sales manager to build up pressure and urgency.

I have emailed a couple of pitch notes to you [separately].

Fractions were compared to property investment and this was the only was to reduce the ownership length and were told that we will be guaranteed to get out at the end of the term.

We never saw a price list and the promise of making money did influence our decision to purchase.

We were told that we could not buy the product without [their] own finance offered by the resort.

The same person sign[ed] the finance paperwork and the timeshare fractional points.

We were not given time to read all of the documentation to be signed thoroughly due to the length of time of meeting and we were not informed of our right to cancel.

We were told that what we bought would increase in value and the club would buy it back in the future[.]

We were told to buy more to be able to sell what we owned and the product to work ok[.]

We were told that we didn't have enough to be able to use it[.]

We were told by the rep and the sales manager that the units we currently has were not the best and needed to become members to secure the best accommodation if we bought more product, we would get priority bookings and better availability unit/standard especially for our disabled children.

We were told that our existing product would not work anymore.

We were told that we would get priority booking as fractional owner but when we want to go there was hardly ever any availability.

No payment protection was taken out as part of the finance and the finance was not fully explained.

We were not told about the existence of rental agreement for the weeks we wouldn't use, what this was? [A]nd what did it guarantee us?

We were not told who would rent our points or weeks.

We were not told about the existing marketing contract or promotion of our unused weeks or points.

[W]e were not told about a resale program or a resale value verbally or in writing.

[W]e were not informed that if our points or fractional property were to be sold and the identity of the buyer or how much they would actually pay.

We were not told whether this would be the company itself as a guarantee or to the open market as a fixed sum."

Without seeing the full email exchange between Mr K and the representative, I cannot be sure of the context in which Mr K says what he has said about the Fractional Club purchase. But I think it's likely that he was largely responding to questions or prompts for information. For example, he says he was not told about the existence of the rental agreement, but I do not understand why he would mention this unless he was prompted – and I am aware that the membership in question did not provide Mr and Mrs K with this feature. Mr K also says he did not take out payment protection, which would only make sense if he was asked or prompted to raise this by the representative.

With all that said, I do not think that Mr K's testimony is wholly unreliable just because of the way in which it was taken from him by the representative. But I do think what Mr K says about the potential to make money from the Fractional Club lacks the necessary detail and context to persuade me that he was motivated by the prospect of making a profit when the Allocated Property was sold at the end of the term. Instead, I think Mr K's testimony indicates that he and Mrs K were interested in securing better holidays for their family and, as they were concerned about the duration of their existing membership, I also think they were interested in the shorter membership term offered by the Fractional Club. That doesn't mean they weren't also at least somewhat interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs K themselves don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr 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 do not 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 were not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership. The PR also says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

As I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I acknowledge that it is also possible that the Supplier did not give Mr and Mrs K sufficient information, in good time, on the various charges they could have been subject to as Fractional Club members in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mr and Mrs K nor the PR have persuaded me that they would not have pressed ahead with their purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

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

The commission arrangement between the Lender and the Supplier

I have considered the commission arrangements between the Lender and the Supplier, in light of the recent Supreme Court judgment.[1] Here, in stark contrast to the facts in Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging Mr and Mrs K's Credit Agreement wasn't high. At £78.00, it was only 1% of the amount borrowed and 1.36% as a proportion of the charge for credit, which is the calculation the Supreme Court used.

Had Mr and Mrs K known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at this level, I'm not currently persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr and Mrs K wanted the Fractional Club membership and had no obvious means of their own to pay for it. And at such a low level, the impact of commission on the cost of the credit they needed for a timeshare they wanted doesn't strike me as disproportionate. So, I think they would still have taken out the loan to fund their purchase at the Time of Sale had the amount of commission been disclosed.

Overall, I don't think that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr and Mrs K."

Responses to the provisional decision

The Lender responded to confirm it accepted my provisional decision and had nothing further to add.

I did not receive a response from Mr and Mrs K or their PR by the deadline provided to them.

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.

As neither party has provided me with anything new to consider, I see no reason to depart from the findings I reached in the provisional decision.

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[1] The judgment handed down on 1 August 2025 in *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ("*Hopcraft, Johnson and Wrench*").

For the reasons I've given above, I'm not persuaded that the Lender was party to a credit relationship with Mr and Mrs K that was unfair to them for the purposes of section 140A of the CCA. Having taken everything into account, I see no other reason why it would be fair or reasonable for me to direct the Lender to compensate Mr and Mrs K.

My final decision

For the reasons set out above, my final decision is that 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 4 February 2026.

Andrew Anderson
Ombudsman