

## **The complaint**

Mr and Mrs I's complaint is, in essence, that Shawbrook Bank Limited, (the 'Lender') acted unfairly and unreasonably by (1) being party to unfair credit relationships 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 I were members of a timeshare provider (the 'Supplier') – having purchased, a Trial Membership from it. But the products at the centre of this complaint are their memberships of a timeshare that I'll call the 'Fractional Club' – which they bought on 22 July 2014 and 8 December 2014 (the 'Times of Sale'). They entered into agreements with the Supplier to initially buy 900 fractional points, at a cost of £14,499 and then subsequently purchased an additional 1,380 points in December 2014 at a cost of £8,359 - (the 'Purchase Agreements').

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

Mr and Mrs I paid for their Fractional Club membership by taking finance of £18,559 and £8,359 from the Lender (the 'Credit Agreements').

Mr and Mrs I – using a professional representative (the 'PR') – wrote to the Lender on 8 April 2020 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since the complaint was 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 wrote to the PR on 7 May 2021, explaining why it wasn't upholding the complaint.

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 I disagreed with the Investigator's assessment 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 think the complaint should be upheld.

In its response the PR explained why it believed the Fractional Club membership was marketed and sold as an investment and why it remained of the opinion that this led to their being an unfair relationship between Mr and Mrs I and the Lender.

Following my provisional decision, I also communicated how I was not persuaded that Mr and Mrs I's credit relationships with the Lender wasn't unfair to them for reasons relating to the commission arrangements between it and the Supplier. In response, the PR reiterated

that it considered that the Fractional Club membership had been sold as an investment, which it said led to an unfair relationship within the meaning of section 140A.

### **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. I've set out my reasoning again below.

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 Times of Sale**

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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 Times of Sale because Mr and Mrs I were told by the Supplier that Fractional Club membership was an “investment” when that was prohibited.

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 as there’s nothing else on file to support the PR’s allegation, I’m not persuaded that there was a representation by the Supplier on the issue in question that constituted a false statement of fact.

So, while I recognise that Mr and Mrs I 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 that 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**

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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 Agreements, the Lender is also liable.

Mr and Mrs I say that they had issues with the availability of the accommodation they wanted to book, – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreements.

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 Mr and Mrs I, states that the availability of holidays was/is subject to demand. I accept that they 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 Agreements.

Regarding the lack of exclusivity of the accommodation, 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, from the evidence I have seen, I do not think the Lender is liable to pay Mr and Mrs I 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 unfair credit relationships?**

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Times of Sale.

But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationships between Mr and Mrs I and the Lender along with all of the circumstances of the complaint, I don't think the credit relationships 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 Times of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Times 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 Times 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 Times of Sale;
5. The inherent probabilities of the sales given their 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 relationships between Mr and Mrs I and the Lender.

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

Mr and Mrs I's complaint about the Lender being party to unfair credit relationships was and is made for several reasons.

The PR says, for instance that:

1. No assessment was carried out as to whether Mr and Mrs I could afford the loans; and
2. Mr and Mrs I were pressured by the Supplier into purchasing Fractional Club membership at the Times of Sale.

However, neither 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 I was actually unaffordable, before also concluding that they lost out as a result, and then consider whether the credit relationships 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 I.

I acknowledge that Mr and Mrs I 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 the sales presentations 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 I made the decision to purchase Fractional Club membership, because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr and Mrs I's credit relationships 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 relationships with the Lender were unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to them as an investment in breach of the prohibition against selling timeshares in that way.

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

A share in the Allocated Properties clearly constituted an investment as they offered Mr and Mrs I 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 I 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.

The PR has said in its responses to my PD and letter in respect of the commission arrangements, that it considers that the Fractional Club membership was sold as an investment. And, as I said in my provisional decision, I accept that it's possible that Fractional Club membership was marketed and sold to Mr and Mrs I as an investment in breach of Regulation 14(3).

However, I remain of the opinion that 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.

### **Were the credit relationships between the Lender and Mr and Mrs I rendered unfair?**

Even if the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Times of Sale, I need to consider what impact that breach had on the fairness of the credit relationships between Mr and Mrs I and the Lender under the Credit Agreements and related Purchase Agreements, 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 credit relationships between Mr and Mrs I and the Lender that were unfair to them and

warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreements and the Credit Agreements 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 I decided to go ahead with the purchases.

I say this because the statement provided on behalf of Mr and Mrs I make no mention of the Fractional Club membership being positioned to them as an investment. And what they said about being told they would be buying shares in a property that would be sold after 19 years, wasn't incorrect.

Also, when they also say they were told they would receive their money back, this doesn't suggest to me that they were led to believe or had an expectation that they would receive a financial gain/profit from purchasing Fractional Club membership. It seems to me from what they have said, that they were motivated by the prospect of having accommodation available at anytime and anywhere, that was exclusive to members. And the purchase of additional points appears to have been so that they could have the weeks that they wanted.

Nevertheless, I can't rule out the possibility that Mr and Mrs I may have been interested in a share in the Allocated Properties. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs I don't persuade me that their purchases were motivated by their share in the Allocated Properties and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs I's decision to purchase Fractional Club membership at the Times of Sales 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 purchases whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationships between Mr and Mrs I 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 Times of Sale**

The PR says that Mr and Mrs I were not given sufficient information at the Times of Sale by the Supplier about membership, including about the ongoing costs of Fractional Club membership.

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 I 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 I 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 facts and circumstances.

The PR also says that a payment of commission from the Lender to the Supplier at the Times of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Times of Sale.

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd*, *Wrench v FirstRand Bank Ltd* and *Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('*Hopcraft, Johnson and Wrench*').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationships between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship...was unfair" (see paragraph 327);
2. The failure to disclose the commission; and
3. The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationships was/is unfair under Section 140A of the CCA:

1. The size of the commission as a proportion of the charge for credit;
2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);
3. The characteristics of the consumer;
4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and
5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, it sets out principles which apply to credit brokers other than car dealer-credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mr and Mrs I in arguing that their credit relationships with the Lender was unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr and Mrs I, nor

have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led Mr and Mrs I into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Times of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But as I've said before, 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. And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Times of Sale, it is for the reasons set out below that I don't currently think any such failure is itself a reason to find the credit relationships in question unfair to Mr and Mrs I.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mr and Mrs I entered into wasn't high. At £1,885, it was only 9.96% of the amount borrowed and even less than that (5.46%) as a proportion of the charge for credit. So, had they known at the Times of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not 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 I wanted 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 Times of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr and Mrs I but as the supplier of contractual rights they obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreement and thus a fiduciary duty.

Overall, therefore, I'm not persuaded 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 relationships unfair to Mr and Mrs I.

### **Commission: The Alternative Grounds of Complaint**

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While I've found that Mr and Mrs I credit relationships with the Lender wasn't unfair to them for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Consumer complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the

Lender without telling Consumer (i.e., secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the Times of Sale insofar as it was relevant to disclosing the commission arrangements between them.

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Consumer a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to them. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Times of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think they would still have taken out the loan to fund their purchase at the Times of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

### **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 Mr and Mrs I's Section 75 claims. I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement and related Purchase Agreement that was unfair to them for the purposes of Section 140A of the CCA. **And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.**

### **My final decision**

For the reasons I've set out above, my decision is not to uphold this complaint.

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

Simon Dibble  
**Ombudsman**