DRN-6065412

## The complaint

Mr and Mrs R'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 R were members of a timeshare provider (the 'Supplier') – having purchased a total of 30,000 European Collection ('EC') points from it over time.

As EC members, every year Mr and Mrs R could use their points in exchange for holidays at the Supplier's holiday resorts. Different accommodation had different points values, depending on factors such as location, size, and time of year. So, for example, a larger apartment in peak season would cost more to a member in points than a smaller apartment outside of school holiday periods.

But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – points in which Mr and Mrs R purchased on the dates below:

- 19,500 fractional points on 25 September 2013. They converted 19,500 of their EC points (at a conversion rate of £1 per point) into fractional points and ended up paying £13,260 ('Purchase Agreement 1').
- 12,500 fractional points on 22 April 2014. They converted their remaining 10,500 EC points (at a conversion rate of £1 per point) and purchased an additional 2,000 fractional points, ending up paying £9,380 ('Purchase Agreement 2').

(which, when appropriate, I'll simply refer to as the ''Purchase Agreements')

As this complaint is concerned with the purchases on 25 September 2013 and 22 April 2014, those are the 'Time(s) of Sale' for the purposes of my decision.

Fractional Club membership differed from their EC membership. The two significant differences were that it had a shorter membership term (15 years compared to an end date of 2054 for the EC membership), and it was also asset backed – which meant it gave Mr and Mrs R more than just holiday rights. It also included a share in the net sale proceeds of a property named on the relevant purchase agreement (which I'll refer to as the 'Allocated Property 1 and 2' or, when appropriate, the 'Allocated Properties') after their membership term ends.

Mr and Mrs R paid for their fractional points by taking the following amounts of finance from the Lender in both of their names:

- £13,260 on 25 September 2013 ('Credit Agreement 1'); and
- £22,705.79 on 22 April 2014 ('Credit Agreement 2') – this consolidated the outstanding balance of Credit Agreement 1.

(which, when appropriate, I'll simply refer to as the ''Credit Agreements')

Mr and Mrs R – using a professional representative (the 'PR') – wrote to the Lender on 16 April 2020 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr and Mrs R's concerns as a complaint and issued its final response letter on 18 February 2021, rejecting it on every ground.

The complaint was referred to the Financial Ombudsman Service. As part of their submissions the PR sent a statement from Mr and Mrs R dated 24 September 2019. As far as is relevant to this complaint, regarding the 2013 sale they said:

> *"The representatives advised that fractional points would give us a guaranteed exit from our timeshare. This was an investment in property that would be sold in 15 years and we would have our investment monies back.*
>
> *This was a very long sales presentation and we felt pressured to purchase and the meeting just went on and on. We just wanted to sign and get out of the room. We were made to feel you would be daft not to take the opportunity offered by the representatives.*
>
> *We were very concerned our children would be stuck with our product. We are clear that we would never have purchased if we had known this.*
>
> *The representatives advised more points meant more availability to exclusive resorts. This is not the case. It is impossible to book, and we compromise on dates and resorts on each occasion. We now know it is not an exclusive membership as we have seen the club resorts on the internet for the general public to rent.*
>
> *We were offered a good price if we purchased that day, but this price would not be available at any other time. We felt very pressured. We decided to purchase to avoid our children inheriting this product and purchased 19500 fraction points on the 25 March 2013 for the cost of £13260…"*

And in relation to the 2014 sale, they said:

> *"In 2014 we were on holiday in Tenerife and again we went along to another update. The representatives offered us an additional 2000 points if we converted our existing European points to fractions.*
>
> *The fractions were an investment in another property which would be sold in the future and we would have our investment monies back and the ability to exit our timeshare contract.*
>
> *This was again another long-high-pressured sales presentation where we felt compelled to purchase to allow our children not to inherit our timeshare product. Also, this opportunity was only available that day and we had to make a decision there and then.*
>
> *22 April 2014 we purchased 12500 fraction points for the cost of £9380. The representative arranged for a consolidation loan with Shawbrook Bank."*

Mr and Mrs R's complaint was assessed by an Investigator who, having considered the information on file, rejected it on its merits.

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

**The provisional decision**

I considered the matter and issued a provisional decision (the 'PD') setting out my initial thoughts on the merits of Mr and Mrs R's complaint.

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 currently do not 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 75 of the CCA: the Supplier's misrepresentations at the Times 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. I will deal with the two sales here separately.*

*Time of Sale 1*

*The Limitation Act 1980 (the 'LA') imposes time limits for people to start legal proceedings – and there are different time limits for different types of claims. Essentially, this means that if someone waits too long to make a claim, the court will usually say it's 'time-barred'. For this reason, if a consumer makes a claim after the relevant time-limit has expired, we'd usually say it was fair and reasonable for the creditor to take into account the timing of the claim to decline it.*

*A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim a consumer could make against the Supplier.*

*A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued. But a claim, like the one in question here, under Section 75 is also "an action to recover any sum by virtue of any enactment" under Section 9 LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.*

*Mr and Mrs R first notified the Lender of their Section 75 claims on 16 April 2020. As more than six years had passed between the Time of Sale 1 and when Mr and Mrs R first put their claims to the Lender, I don't think it would have been unfair or unreasonable of the Lender to reject Mr and Mrs R's concerns about the Supplier's alleged misrepresentations at Time of Sale 1.*

*Time of Sale 2*

*It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale 2 because Mr and Mrs R were:*

(1) *told by the Supplier that their EC points were held in perpetuity and the liability would be passed on to their children.*

(2) *told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true.*

(3) *told by the Supplier that Fractional Club membership was an "investment" when that was not true.*

*However, I'm not persuaded by the evidence submitted that the Supplier was likely to have said that EC membership was held in perpetuity. It is true to say that EC membership had a considerably longer term than Fractional Club, but there is nothing in Mr and Mrs R's statement which sets out, at Time of Sale 2, who said what, when, and in what context in this regard.*

*And 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 while, as I understand it, the sale of the Allocated Property could be postponed in certain circumstances according to the Fractional Club Rules, Mr and Mrs R say little to nothing to persuade me that they were given a guarantee by the Supplier that the Allocated Property would be sold on a specific date, when such a promise would have been impossible to stand by given the inevitable uncertainty of selling property some way into the future. 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 R and the PR have concerns about the way in which Fractional Club membership was sold by the Supplier at Time of Sale 2, 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 all of this means that I don't think that the Lender acted unreasonably or unfairly when it dealt with these particular Section 75 claims for misrepresentation.*

*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.*

*Mr and Mrs R say that it was impossible to book accommodation, and they could not holiday where and when they wanted to – 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 R states that the availability of holidays was/is subject to*

*demand. It also looks like they made use of their fractional points to holiday on 16 occasions between January 2014 and August 2019. Whilst I accept that they may not have been able to take certain holidays at the times and locations that they wanted, I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreements.*

*So, from the evidence I have seen, I do not think the Lender is liable to pay Mr and Mrs R 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 processes 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 R and the Lender along with all of the circumstances of the complaint, I don't think the credit relationships between them were 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;*
2. *The provision of information by the Supplier at the Times 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 Times of Sale;*
4. *The inherent probabilities of the sale given its circumstances.*

*I have then considered the impact of these on the fairness of the relevant credit relationships between Mr and Mrs R and the Lender.*

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

*Mr and Mrs R'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. *the right checks weren't carried out before the Lender lent to Mr and Mrs R; and*
2. *Mr and Mrs R were pressured by the Supplier into purchasing Fractional Club membership at the Times of Sale.*

*However, as things currently stand, neither of these strike me as a reason 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 R 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 R.*

*I acknowledge that Mr and Mrs R may have felt weary after sales processes that went on for a long time. But they say little about what was said and/or done by the Supplier during their 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 14-day cooling off periods and they have not provided a credible explanation for why they did not cancel their membership during those times. Moreover, they did go on to make a further purchase from the Supplier – which I find difficult to understand if the reason they went ahead with the purchases in question was because they were pressured into them. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs R made the decisions 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 R's credit relationships with the Lender were 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 prohibition against selling timeshares in that way.*

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

*Shares in the Allocated Properties clearly constituted investments as they offered Mr and Mrs R 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 R 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.*

*And there is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Times 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 R, the financial value of their share in the net sales proceeds of the Allocated Properties 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 R 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 relationships between the Lender and the Consumer have been rendered unfair?*

*Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Times of Sale, I now need to consider what impact such breaches, if they occurred, would have had on the fairness of the credit relationships between Mr and Mrs R 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, if I am to conclude that a breach of Regulation 14(3) led to credit relationships between Mr and Mrs R 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 R decided to go ahead with their purchases. I say that because, in relation to both sales, although they have said that the Supplier positioned Fractional Club membership as "…an investment in property…and we would have our investment monies back", Mr and Mrs R have made it clear in their testimony why they made the purchases.*

*As regards Time of Sale 1, when describing their existing EC membership they said:*

> *"We were very concerned our children would be stuck with our product. We are clear that we would never have purchased if we had known this."*

*They then went on to describe why they decided to make the Fractional Club purchase:*

> *"…We decided to purchase to avoid our children inheriting this product and purchased 19500 fraction points on the 25 March 2013 for the cost of £13260…"*

*And as regards Time of Sale 2:*

> *"This was again another long-high-pressured sales presentation where we felt compelled to purchase to allow our children not to inherit our timeshare product. Also, this opportunity was only available that day and we had to make a decision there and then."*

*That doesn't mean they weren't 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 R themselves don't persuade me that their purchases were motivated by their shares in the Allocated Properties and the possibility of a profit, I don't think breaches of Regulation 14(3) by the Supplier were likely to have been material to the decisions Mr and Mrs R 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 R's decisions to purchase Fractional Club membership at the Times of Sale were 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), because they thought that the liabilities connected to their EC points could be passed to their children, and they wished to avoid that.*

*And for that reason, I do not think the credit relationships between Mr and Mrs R and the Lender were unfair to them even if the Supplier had breached Regulation 14(3).*

*Mr and Mrs R's Commission Complaint*

*I note that one of Mr and Mrs R's other concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreements. The Supreme Court's recent judgment Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 ('Johnson, Wrench and Hopcraft') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer–credit brokers. So, once the implications of that judgment become clear, I will finalise my findings on this complaint.*

*Conclusion*

*In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and if I put the issue of commission to one side for the time being, I am not persuaded that the Lender was party to credit relationships with Mr and Mrs R under the Credit Agreements that were unfair to them for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate them.*

*But, as I've already said, once the implications of the above judgment become clear, I will finalise my findings on this complaint."*

**The responses to the provisional decision**

Neither the Lender nor the PR had anything to add in response to the PD.

Following this I set out to both sides how I was not persuaded that Mr and Mrs R's credit relationship with the Lender was unfair to them for reasons relating to the commission arrangements between it and the Supplier.

The PR responded to say it had nothing further to add.

Having received the relevant responses from both sides, I am now finalising my decision.

**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 Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

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.

Following the responses from both sides, I've considered the case afresh. And having done so, and because no new evidence has been submitted or arguments made in response to

my initial findings, I see no reason to depart from the outcome as set out in the provisional decision above.

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 R's Section 75 claims, and I am not persuaded that the Lender was party to credit relationships with them under the Credit Agreement that were 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 Mr and Mrs R.

**My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 6 February 2026.

Chris Riggs
**Ombudsman**