

## **The complaint**

Mrs H's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying claims under Section 75 of the CCA.

## **What happened**

Mrs H and her late husband Mr H were members of a timeshare club (the 'European Collection') offered by a timeshare provider (the 'Supplier'). They purchased a total of 18000 points in the club. In 2013, whilst on holiday, they exchanged those points for points in a new timeshare product that I'll call the 'Fractional Club' – which they bought on 13 August 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 18000 fractional points at a cost of £9,851 (the 'Purchase Agreement'). It is the sale of the Fractional Club membership to them that is at the heart of this complaint.

Fractional Club membership was asset backed – which meant it gave Mrs H and Mr H 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.

Mrs H and Mr H paid for their Fractional Club membership by taking finance of £9,851 from the Lender (the 'Credit Agreement'). Mr H sadly died only a few months later, in March 2014.

Mrs H – using a professional representative (the 'PR') – wrote to the Lender on 17 July 2018 (the 'Letter of Complaint') to raise a number of different concerns. As both sides are familiar with Mrs H's concerns, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mrs H's concerns as a complaint. But, as it couldn't respond fully within the usual timescales, it informed her that she could refer her complaint to the Financial Ombudsman Service, which she did. Following that referral the Lender issued its Final Response Letter ('FRL') on 14 January 2019, rejecting the complaint on every ground.

The complaint was then assessed by an Investigator who, having considered the information on file, thought the complaint should be upheld on its merits.

The Investigator thought that the Supplier had marketed and sold Fractional Club membership as an investment to Mrs H at the Time of Sale in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'). And given the impact of that breach on her purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mrs H was rendered unfair to her for the purposes of section 140A of the CCA.

The Lender disagreed with the Investigator's assessment and asked for an Ombudsman's decision and it was passed to me. I issued a provisional decision ('PD') upholding the complaint the findings from which are set out below.

*"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 currently think that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations') by marketing and/or selling Fractional Club membership to Mrs H as an investment, which, in the circumstances of this complaint, rendered the credit relationship between her and the Lender unfair to her for the purposes of Section 140A of the CCA.*

*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, while I recognise that there are a number of aspects to this complaint, it is not necessary to make formal findings on all of them because, even if one or more of those aspects ought to succeed, the redress I am currently proposing puts Mrs H and Mr H in the same or a better position than they would otherwise be in.*

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

*Having considered the entirety of the credit relationship between Mrs H and the Lender along with all of the circumstances of the complaint, I 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 Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the 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 Mrs H and the Lender.*

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

*The Lender does not dispute, and I am satisfied, that Mrs H'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 Mrs H says that the Supplier did exactly that at the Time of Sale. The PR didn't refer to Fractional Club membership being sold as an investment in the Letter of Complaint but did attach Mrs H's recollection of what had happened. Her signed statement is dated 20 November 2017. In that statement she refers to two reasons she and Mr H were interested*

*in Fractional Club membership. The first was that the membership would end after 15 years. The second was because they were told that it was an investment. Mrs H said the following about this:*

*“We were told that it was a solid investment and that the value of the property we were investing in (Santa Barbara Phase iii in Tenerife) would definitely have increased after 15 years as the whole area was under development and was an up and coming resort. This was another reason why we chose Fractional ownership, thinking we would receive a return on the money we had already invested in Diamond.”*

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

*A share in the Allocated Property clearly constituted an investment as it offered Mrs H the prospect of a financial return – whether, or not, like all investments, that was more than what she and Mr H first put into it. But it is important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn’t prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.*

*In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.*

*To conclude, therefore, that Fractional Club membership was marketed or sold to Mrs 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 her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.*

*There is evidence in this complaint that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an ‘investment’ or quantifying to prospective purchasers, such as Mrs H and Mr 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, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mrs H and Mr H as an investment.*

*For example, the Terms and Conditions attached to the Purchase Agreement include the following:*

*“You should not purchase Your Diamond Fractional Points as an investment in real estate. The Purchase Price paid by you relates primarily to the provision of memorable holidays for the duration of your ownership.”*

*And Mrs H and Mr H also signed a Customer Compliance Statement which included several statements with ‘yes’ and ‘no’ tick boxes with one of the statements ticked yes stating:*

*“ We understand that the purchase of our Diamond Fractional points is an investment in our future holidays and that it should not be regarded as a property or financial investment. We recognize that the sale price achieved on the sale of the property in the owners club (and to which our Diamond Fractional Points have been attributed)*

*will depend on market conditions at that time, that property prices can go down as well as up and there is no guarantee as to the eventual sale price of the Property.”*

*However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. It is significant in my view that the contractual paperwork that Mrs H and Mr H were provided with, including the Terms and Conditions and Customer Compliance statement, would only have been provided after any sale presentation and their agreement to go ahead with purchasing Fractional Club membership.*

*Moreover, the examples I have referred to above, where the Supplier makes reference to the purpose of membership being for ‘future and memorable’ holidays didn’t really apply in the case of Mrs H and Mr H. That is because they already had existing holiday rights at the time and the purchase of Fractional Club membership involved the transfer of those rights, not new holiday rights. So, the above disclaimers didn’t address the reality of the purchase that Mrs H and Mr H made at the time.*

*With the above in mind I have considered whether it is more likely than not that the Supplier sold or marketed membership of the Fractional Club as an investment, in breach of Regulation 14(3) of the Timeshare Regulations, as Mrs H says it did. And, having done so, I have concluded that the answer to this question is yes. I explain below why I have come to that conclusion.*

#### *How the Supplier marketed and sold the Fractional Club membership.*

*During the course of the Financial Ombudsman Service’s work on complaints about the sale of timeshares, the Supplier has provided training materials and internal documentation that it said was relevant to how it trained its sales staff. Some of that material emphasised the benefits of owning an asset linked to an interest in real estate, but other parts of the material reiterated the need for its sales staff not to sell membership as an investment. More recently the Supplier has explained that much of the material was not actually use when selling memberships that that it had provided this in error to our service.*

*However, if I accept this at face value (which I have for the purposes of this decision) then I have no way of knowing how the Supplier trained its salespeople. I have also not been provided with the marketing material that prospective members such as Mrs H would have been shown at the Time of Sale. So, in making my findings I have taken into account all the available evidence, including Mrs H’s recollection of the sale, the sales documentation, the arguments put by the Supplier and Lender, as well as the wider circumstances of the purchase.*

*Mrs H and Mr H were already timeshare owners with 18000 points at the Time of Sale. The purchase of Fractional Club membership involved the transfer of those points with no additional points being purchased at that time. So the purchase didn’t give them any holiday entitlement beyond what they already had.*

*Given this, the Supplier must have promoted something other than taking holidays which persuaded Mrs H and Mr H into thinking that purchasing Fractional Club membership was worthwhile. The Letter of Complaint referred to Mrs H being concerned that their existing timeshare membership was ‘written into perpetuity’. And in her statement Mrs H said that one of the reasons they went with discussing membership was because Fractional Club membership had a definite end date after 15 years and they were concerned about increasing management charges and their existing points transferring to their children if they died. I presume Mrs H means that she was concerned the increasing management fees could become the children’s responsibility.*

*Mrs H's and Mr H's existing European Collection membership wasn't for perpetuity, as the Lender has pointed out, and the points didn't transfer to their children automatically on their deaths. However, Fractional Club membership was shorter than Mrs H's existing timeshare membership and I think it is more likely than not the Supplier will have highlighted this to Mrs H and Mr H at the Time of Sale. However, I am not satisfied they went ahead with the purchase because of this, for reasons I explain below. So, the Supplier must have put forward another reason when selling Fractional Club membership.*

*There were only two other things that Fractional Club membership provided that were not available to Mrs H and Mr H through their existing European Collection membership. The first is the potential return on the sale of the Allocated Property. The second is the right to rent out Fractional Club points to offset the maintenance fees payable, if they chose not to sue the points themselves for holidaying.*

*Given the nature of the membership, I would find it surprising if the Supplier had not mentioned to Mrs H and Mr H the opportunity of renting out their points to generate an income if they were not using the points themselves. However, I have seen no evidence they were told that the rental income would be enough to match their annual maintenance fee or generate a profit after fees were paid. So, this in my view was not something that would have persuaded them that it was worthwhile taking out credit of £9,851 to purchase Fractional Club membership.*

*So, the purchase of Fractional Club membership by them only makes sense in my view if the other benefit of membership I refer to above, namely the possibility of a return on sale of the Allocated Property, had been promoted to Mrs H and Mr H by the Supplier at the Time of Sale.*

*Given this, I find it more likely than not that this was put forward to them as a reason to purchase membership. And, given that there must have been some tangible benefit put forward to suggest why Mr S and Mrs S purchase membership, I think it also more likely than not that the Supplier either explicitly said or suggested that they might make some financial gain or profit when membership ended.*

*So, given what Mrs H's has said about Fractional Club membership being sold to her as an investment and that the overall circumstances I have referred to above support what she has said, I think it is more likely than not that at the Time of Sale Mrs H and Mr H were told that they would make a return on their investment when the membership ended, in breach of Regulation 14(3) of the Timeshare Regulations.*

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

*Having found that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mrs 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 Mrs H and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.*

*With that in mind I have considered what, more likely than not, led Mrs H into entering into*

*the Purchase Agreement and Credit Agreement. In her witness statement Mrs H refers to being made aware that Fractional Club was membership for a shorter term than her existing European Collection membership and to being told it was a solid investment and that the value of the Allocated Property would only go up. She makes no mention of the ability to rent out her Fractional Club membership to offset the maintenance cost fees and there is no evidence this had any bearing on her decision to purchase membership.*

*As for the shorter membership, in her witness statement Mrs H says that she and Mr H decided, following their initial discussion about Fractional Club membership, to have another chat with the Supplier because it gave them a way out after 15 years and they were concerned about the rising costs of management fees. However, whilst this may have led Mrs H to discussing matters further with the Supplier, having considered what she has said carefully, I am not persuaded that this is why she entered into the Purchase Agreement and Credit Agreement.*

*Mrs H statement makes clear she was aware of the shorter term before she had further discussions with the Supplier – it was what led her to have those discussions. It follows that this of itself had not persuaded her to purchase Fractional Club membership. Nor was it likely to have been the subject of those discussions, given she already knew the agreement was for 15 years.*

*I think it is more likely than not those further discussions were about the investment element of Fractional Club membership and, given that Mrs H's decision to go ahead with the purchase followed those discussions, I accept her evidence that she was motivated to purchase Fractional Club membership by the possibility of a gain or profit on sale of the Allocated Property at the end of the membership period and this was the main reason she went ahead.*

*Mrs H has not said, or suggested, for example, that she would have pressed ahead with the purchase had the Supplier not led her to believe that Fractional Club membership was an appealing investment opportunity. And as she faced the prospect of borrowing and repaying a substantial sum of money while subjecting herself to long-term financial commitments, had she not been encouraged by the prospect of a financial gain from membership of the Fractional Club, I'm not persuaded she would have pressed ahead with the purchase regardless.*

*In summary my findings are that the Supplier marketed and sold Fractional Club membership to Mrs H as an investment in breach of Regulation 14(3) and she entered into the Purchase Agreement and Credit Agreement because of this.*

I concluded that the Lender participated in and perpetuated an unfair credit relationship with Mrs H under the Credit Agreement and related Purchase Agreement for the purposes of section 140A CCA and because of this it was fair and reasonable to uphold the complaint and award redress.

I gave both parties the opportunity of providing further information and evidence in response to my provisional findings before making my final determination. The PR said Mrs H accepted the PD in principle. The Lender didn't agree with the PD and, in summary, made the following points.

- The first time the allegation about Fractional Club membership being sold to Mrs H as an investment was made to it was when it received her statement with the Investigator's view on 8 March 2024.
- The relationship between it and Mrs H ended on 29 September 2014 so if the

allegation wasn't made to it or our service before 29 September 2020 we do not have jurisdiction to consider this complaint.

- In any event the fact that no mention was made of Fractional Club membership being sold as an investment was made in the Letter of Complaint or Complaint Form demonstrates the allegation is unreliable and it is unlikely this motivated Mrs H to purchase membership.
- As the allegation wasn't made to it until March 2024 it didn't have the opportunity of responding to this or putting forward further evidence which amounts to procedural unfairness.
- It is clear from what Mrs H has said that her main motivation for purchase was the shorter term and she would have purchased membership because of this in any event.
- The conclusion that the Supplier was more likely than not to have sold Fractional Club membership as an investment is not based on any real evidence but the Ombudsman's own inferences.
- It is irrational for the Ombudsman to dismiss the shorter membership term as the main reason Mrs H was interested in membership simply because she was aware of the shorter term before the presentation.
- The Ombudsman hypothesising Mrs H's motivation for purchase in a way which doesn't align with the facts isn't fair or reasonable.

### **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.

### **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.

I have considered everything that the Lender has said in response to my PD but nothing it has said persuades me that I should change the conclusion I came to or the findings I made which, for the avoidance of doubt, form part of the findings in this final decision unless I state to the contrary.

The Lender has said that it was unaware of the allegation Mrs H made about Fractional Club membership being sold as an investment until March 2024. It raises several arguments about this, from jurisdiction to this creating procedural unfairness because it didn't have the opportunity of addressing this when the complaint was made. However, the Lender is wrong about when it was first made aware of this allegation, as I explain below.

The Supplier emailed the Lender, on 14 January 2019, referring to the statement made by

Mrs H and enclosing its response to the complaint - in which it commented expressly on what she had said about Fractional Club membership being sold as an investment.

In its FRL, also dated 14 January 2019, the Lender included information that the Supplier had provided in its email so would have known Mrs H was alleging Fractional Club membership had been sold as an investment at that time despite this not being referred to in the Letter of Complaint. The Lender also emailed our service on 11 April 2019 and attached Mrs H's statement.

It follows that the Lender's arguments as to there being some jurisdiction issue or procedural unfairness arising from it only being made aware of this allegation in 2024 is without merit. I also don't accept the Lender's argument that because the Letter of Complaint and Complaint Form didn't refer to the allegation this establishes Mrs H wasn't motivated to purchase Fractional Club membership because it was an investment, given she did refer to this in her statement.

The Lender says that it is clear from what Mrs H said that her main motivation in purchasing membership was the shorter term. But I explained in my PD why I wasn't persuaded that this was the case and the Lender has provided no information or evidence that persuades me the findings I made about this were wrong. There is nothing irrational or unfair in me finding that Mrs H was motivated to purchase Fractional Club membership because of the gain or profit she might make when the Allocated Property was sold and that she wouldn't otherwise have gone ahead with the purchase, given what she said in her statement and the overall circumstances of the sale.

## **Conclusion**

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Mrs H under the Credit Agreement and related Purchase Agreement for the purposes of section 140A CCA and because of this I think it is fair and reasonable for me to uphold the complaint.

## **Putting things right**

Having found that Mrs H would not have agreed to purchase Fractional Club membership at the Time of Sale were it not for the breach of Regulation 14(3) of the Timeshare Regulations by the Supplier (as deemed agent for the Lender), and the impact of that breach meaning that, in my view, the relationship between the Lender and the Consumer was unfair under section 140A of the CCA, I think it would be fair and reasonable to put her back in the position she would have been in had she not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mrs H agrees to assign to the Lender her Fractional Points or hold them on trust for the Lender if that can be achieved.

Mrs H was an existing European Collection member and that membership was traded in against the purchase price of Fractional Club membership. Under her European Club membership, she had 18000 European Club Points. And, like Fractional Club membership, she had to pay annual management charges as a European Collection member. So, had she not purchased Fractional Club membership, she would have always been responsible to pay an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Mrs H from the Time of Sale as part of her Fractional Club membership should amount only to the difference between those charges and the annual management charges she would have paid as an ongoing European Collection member.

Also, as set out above, Mrs H did not increase her holiday entitlement on the purchase of Fractional Club membership. It follows that any holidays she took could have been taken irrespective of the purchase that I have considered in this decision. So, I do not think it is fair for the Lender to make any deduction for the holidays Mrs H has taken using her Fractional Club membership.

So, here's what I think needs to be done to compensate Mrs H with that being the case – whether or not a court would award such compensation:

- (1) The Lender should refund Mrs H's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.
- (2) In addition to (1), the Lender should also refund the difference between Mrs H's Fractional Club annual management charges paid after the Time of Sale and what her European Collection annual management charges would have been had she not purchased Fractional Club membership.

(I'll refer to the output of steps 1 and 2 as the 'Net Repayments' hereafter)

- (3) Simple interest at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint. HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give Mrs H a certificate showing how much tax it's taken off if she asks for one.
- (4) The Lender should remove any adverse information recorded on Mrs H's credit file in connection with the Credit Agreement reported within six years of this decision.
- (5) If Mrs H's Fractional Club membership is still in place at the time of this decision, as long as she agrees to hold the benefit of her interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify her against all ongoing liabilities as a result of her Fractional Club membership.

HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give Mrs H a certificate showing how much tax it's taken off if she ask for one.

### **My final decision**

I uphold this complaint for the reasons set out above. Shawbrook Bank Limited must calculate and pay the redress to Mrs H that I have set out above.

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

Philip Gibbons  
**Ombudsman**