

The complaint

Mrs A's complaint is, in essence, that Tandem 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 a claim under Section 75 of the CCA.

The loan in question was taken out in Mrs A's sole name and as such, she is the only eligible complainant here. But, as the timeshare purchased using the loan was taken out in the joint names of Mrs A and Mr B, I'll refer to them both throughout where relevant.

What happened

Mrs A and Mr B were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Signature membership' – which they bought on 30 September 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,540 Signature points at a cost of £18,220 (the 'Purchase Agreement'). But, after trading in their existing membership, they ended up paying £13,020 for their Signature membership.

Signature membership was asset backed – which meant it gave Mrs A and Mr B 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. It also offered guaranteed availability of their Allocated Property in a set week each year, or they could use their points to stay at another property from the Supplier's portfolio of resorts.

Mrs A and Mr B paid for their Signature membership by taking finance of £13,020 from the Lender in Mrs A's sole name (the 'Credit Agreement').

Mrs A – using a professional representative (the 'PR') – wrote to the Lender on 22 October 2021 (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 Mrs A's concerns as a complaint and issued its final response letter on 26 November 2021, rejecting it on every ground.

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.

Mrs A disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. At the same time, the PR added a new point of complaint. Namely, that the Lender paid the Supplier commission and this was not disclosed to Mrs A.

I considered the matter and issued a provisional decision (the 'PD'). In that decision, I said:

“Section 75 of the CCA: the Supplier’s misrepresentations at the Time 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. 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 Signature membership had been misrepresented by the Supplier at the Time of Sale because Mrs A and Mr B were:

- 1. Told that they had purchased an investment that would “considerably appreciate in value”.*
- 2. Promised a considerable return on their investment because they were told that they would own a share in a property that would considerably increase in value.*
- 3. Told that they could sell their Signature membership to the Supplier or easily to third parties at a profit.*
- 4. Made to believe that they would have access to “the holiday apartment” at any time all year round.*

However, neither points 1 nor 2 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. And even if the Supplier’s sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn’t any accompanying evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

As for points 3 and 4, while it’s possible that Signature membership was misrepresented at the Time of Sale for one or both of those reasons, I don’t think it’s probable. They’re given little to none of the colour or context necessary to demonstrating that the Supplier made false statements of existing fact and/or opinion. And as there isn’t any other evidence on file to support the suggestion that Signature membership was misrepresented for these reasons, I don’t think it was.

So, while I recognise that Mrs A - and the PR - have concerns about the way in which Signature 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 140A of the CCA: did the Lender participate in an unfair credit relationship?

I’ve already explained why I’m not persuaded that Signature membership was actionably misrepresented by the Supplier at the Time 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 relationship between Mrs A 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. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
4. The inherent probabilities of the sale given its circumstances; and, when relevant
5. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationship between Mrs A and the Lender.

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

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

The PR says, for instance, that the right checks weren't carried out before the Lender lent to Mrs A. I haven't seen anything to persuade me that was the case in this complaint given its 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 Mrs A was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship with the Lender was unfair to her for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mrs A.

Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mrs A knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Signature membership. And as the lending doesn't look like it was unaffordable for her, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mrs A's financial loss – such that I can say that the credit relationship in question was unfair on her as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate her, even if the loan wasn't arranged properly.

The PR also says that there was one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Mrs A (and Mr B) in practice, nor that any such terms led them to behave in a certain way to their detriment, I'm not persuaded that any of the terms governing Signature membership are likely to have led to an unfairness that warrants a remedy.

I acknowledge that Mrs A and Mr B 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

Signature membership when they simply did not want to. Customers were also generally given a 14-day cooling off period and Mrs A and Mr B 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 Mrs A and Mr B made the decision to purchase Signature membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mrs A'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 says the credit relationship with the Lender was unfair to them. And that's the suggestion that Signature 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 Mrs A and Mr B's Signature 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 Signature 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 says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mrs A and Mr B were told by the Supplier that Signature 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 the Allocated Property clearly constituted an investment as it offered Mrs A and Mr B 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 Signature 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 Signature membership. They just regulated how such products were marketed and sold.

To conclude, therefore, that Signature membership was marketed or sold to Mrs A and Mr B 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 Signature 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 Signature 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 Signature membership as an ‘investment’ or quantifying to prospective purchasers, such as Mr and Mrs B, 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 Signature membership as an investment. So, I accept that it’s equally possible that Signature membership was marketed and sold to Mrs A and Mr B 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 Mrs A 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 A 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 and Mr B to enter into the Purchase Agreement and Mrs A to enter into the Credit Agreement is an important consideration.

But it was only after the judgment in R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) (‘Shawbrook & BPF v FOS’) was handed down, that Mrs A recalled that the Supplier led them to believe that Signature membership offered them the prospect of a financial gain. And as experience tells me that, the more time that passes between a complaint and the event complained about, the more risk there is of recollections being vague, inaccurate and/or influenced by discussion with others, I find it difficult to understand why the Financial Ombudsman Service was only given such evidence when it was.

Indeed, as there isn’t any other evidence on file to corroborate Mrs A’s very recent evidence about their motivations at the Time of Sale, there seems to me to be a very real risk that Mrs A’s recollections were coloured by the judgment in Shawbrook & BPF v FOS. And with that being the case, I’m not persuaded that I can give her written recollections the weight necessary to finding that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

So, on my reading of the evidence before me, the prospect of a financial gain from Signature membership was not an important and motivating factor when they decided to go ahead with their purchase. That doesn't mean they weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mrs A herself doesn'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 Mrs A and Mr B ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Signature membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mrs A and Mr B's decision to purchase Signature membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). And for that reason, I do not think the credit relationship between Mrs A and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

Mrs A's Commission Complaint

*I note that one of Mrs A'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 Agreement. 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."*

In conclusion, I did not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim, and if I put the issue of commission to one side for the time being, I was not persuaded that the Lender was party to a credit relationship with Mrs A under the Credit Agreement that was unfair to her for the purposes of Section 140A of the CCA – nor could I see any other reason why it would be fair or reasonable to direct the Lender to compensate her.

The Lender did not respond to the PD. The PR did respond – they did not accept the PD and provided some further comments and evidence they wish to be considered.

Following my provisional decision, I also communicated to both parties how I was not persuaded that Mrs A's credit relationship with the Lender was unfair to her for reasons relating to the commission arrangements between it and the Supplier¹.

Having received the relevant responses from both parties, I'm 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

¹ The Lender responded and confirmed they did not have any further comments. The PR did not respond or provide any further comments on this point.

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.

Following the responses from both parties, I’ve considered the case afresh and having done so, I’ve reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn’t to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven’t commented on, or referred to, something that either party has said, this doesn’t mean I haven’t considered it.

Rather, I’ve focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR’s further comments in response to the PD in the main relate to the issue of whether the credit relationship between Mrs A and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mrs A and Mr B as an investment at the Time of Sale.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But they didn’t make any further comments in relation to those in their response to my PD. Indeed, they haven’t said they disagree with any of my provisional conclusions in relation to those other points. And since I haven’t been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I’ll focus here on the PR’s points raised in response.

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

The Supplier’s alleged breach of Regulation 14(3) of the Timeshare regulations

The PR explained in their response to my PD that they hadn't shared the Investigator's view on this complaint with Mrs A, saying "*this was a deliberate step to ensure that their recollections remained entirely their own*".

The PR said this means Mrs A's recollections have not been influenced by either the Investigator's view or the aforementioned judgement handed down in *Shawbrook and BPF v FOS*².

Part of my assessment of the testimony was to consider *when* it was written, and whether it may have been affected by external factors such as the widespread publication of the outcome of *Shawbrook and BPF v FOS*.

I have thought about what the PR has said, but on balance, I don't find it a credible explanation of the contents of Mrs A's evidence. Here, the PR responded to our Investigator's view to say that Mrs A alleged that Signature membership had been sold to them as an investment and it provided evidence from Mrs A to that effect. I fail to understand how Mrs A disagreed with the view (and PD) on the basis that the timeshare was sold as an investment if they didn't know our Investigator's conclusions. It follows, I think it more likely than not, that Mrs A did know about our Investigator's view before their evidence was provided.

So, I maintain that there is a risk that Mrs A's testimony was coloured by the Investigator's view and/or the outcome in *Shawbrook & BPF v FOS*. And, on balance, the way in which the evidence has been provided makes me conclude that I can place little weight on it. So, ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mrs A's (and Mr B's) purchasing decision.

The PR says that as the Supplier's pricing sheet set out the "unit share" Mrs A and Mr B acquired under their Signature membership, this shows the investment element played "quite an important role" in convincing them to purchase it. But I don't agree with that analysis. The pricing sheet was a proforma document that captured a number of details about the purchase in a standardised format. And the Supplier would have recorded that information irrespective of the customer's motivations for purchasing. So, I don't consider this document offers any insight into Mrs A and Mr B's motivation for making their purchase.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my provisional decision, the Timeshare Regulations did not ban products such as the Signature membership. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mrs A and Mr B's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mrs A and the Lender was unfair to her for this reason.

S140A conclusion

² *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('*Shawbrook & BPF v FOS*').

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Mrs A and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

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 Mrs A's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement that was unfair to her 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 her.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 5 March 2026.

Fiona Mallinson
Ombudsman