

The complaint

Mr H and Mrs G complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them 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.

What happened

Mr H and Mrs G were the 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 'Fractional Club' which they purchased on 16 May 2014 (the 'Purchase Agreement'). In that agreement they traded in 32000 non-fractional points for 32000 fractional points and purchased a further 4000 fractional points for a total cost of £31,360.

Fractional Club membership was asset backed – which meant it gave Mr H and Mrs G 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') after their membership term ends.

Mr H and Mrs G paid for their fractional points by taking lending of £31,060 from the Lender (the 'Credit Agreement').

Mr H and Mrs G – using a professional representative (the 'PR') – wrote to the Lender on 28 December 2018 (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. Other than to add that other than this letter and our complaint form we've received no further submissions or account of what happened from Mr H and Mrs G.

The Lender dealt with Mr H and Mrs G's concerns as a complaint and issued its final response letter (dated 7 February 2019) 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.

Mr H and Mrs G 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 on the 31 December 2025 saying the following (in italics and smaller font for ease):

"... I do not currently think this complaint should be upheld.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and

reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

Section 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.

With regard to this purchase certain conditions must be met for section 75 to apply including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. Section 75(3)(b) says this protection does not apply if:

"the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000."

In this case we have the purchase agreement showing the cost of the membership purchased as being £31,360. Accordingly it would seem clear that the misrepresentation claim under section 75 of the CCA isn't within the financial limits set by the CCA. And so, any section 75 claim made to the Lender cannot be successful as liability does not attach to the Lender for any misrepresentations by the Supplier under this provision.

But even if I'm wrong on that I don't think the claim under section 75 should be successful in any event.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr H and Mrs G were told by the Supplier that Fractional Club membership was an "investment" when that was not true.

However this does not strike me as a misrepresentation even if such a representation had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue – nor was it untrue to tell prospective members that they would receive some money when the allocated property is sold. After all, a share in an allocated property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give prospective members that interest, it did not change the fact that they acquired such an interest.

The PR has raised other matters as potential misrepresentations, but it seems to me that they are not allegations of the Supplier saying something that was untrue. Rather, it is that Mr H and Mrs G weren't told things about the way the membership worked, for example, was that the obligation to pay management fees could be passed on to their children. It seems to me that these are allegations that Mr H and Mrs G wasn't given all the information they needed at the Time of Sale, and I will deal with this further below.

So, while I recognise that Mr H and Mrs G 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

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 H and Mrs G say that 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 Agreement.

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 H and Mrs G 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 numerous occasions and according to the Supplier made over a hundred reservations (albeit they cancelled some of these). 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 Agreement. The PR's submissions on this matter are far from persuasive bearing in mind the facts of the matter.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr H and Mrs G 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 relationship?

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 relationship between Mr H and Mrs G and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship 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 along with any relevant training material;
2. The provision of information by the Supplier at the Times of Sale, including the contractual documentation and disclaimers made by the Supplier;
3. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements;
4. Evidence provided by both parties on what was likely to have been said and/or done at the Times of Sale;
5. The inherent probabilities of the sale given its 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 relationship between Mr H and Mrs G and the Lender.

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

Mr H and Mrs G's complaint about the Lender being party to an unfair credit relationship was and is made as the PR suggests that Fractional Club membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Mr H and Mrs G's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club membership as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But the PR says that the Supplier did exactly that at the Times of Sale.

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.

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

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the 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 H and Mrs G, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr H and Mrs G 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 relationship between the Lender and Mr H and Mrs G have been rendered unfair to them had there been a breach of Regulation 14(3) of the Timeshare Regulations?

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 had on the fairness of the credit relationship between Mr H and Mrs G 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 credit relationship between Mr H and Mrs G 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 Agreement and the Credit Agreement is an important consideration.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mr H and Mrs G decided to go ahead with their purchases. I say this because Mr H and Mrs G give no persuasive account of what the sale process was, what was said or what their motivations were as to the alleged investment aspect of this sale. They allege that it was sold as an investment but give negligible explanation as to how and what motivated them on this aspect of this membership. Mr H and Mrs G haven't provided any statement on the matter. Indeed most of their claim letter focuses on other issues and only alleges it was sold as an investment. In my view their claim on this point is far from persuasive.

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 Mr H and Mrs G themselves don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think breaches of Regulation 14(3) by the Supplier were likely to have been material to the decision Mr H and Mrs G 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 H and Mrs G's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr H and Mrs G 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 H and Mrs G were not given sufficient information at the Times of Sale by the Supplier in order to make an informed choice.

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 H and Mrs G 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 H and Mrs G nor the PR have persuaded me that they would not have pressed ahead with their purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the PR's argument that Mr H and Mrs G's heirs would inherit the on-going management charges, I fail to see how that could be the case or that it could have led to an unfairness that warrants a remedy.

Overall Conclusion

In conclusion, given the facts and circumstances of this complaint, I am not persuaded that the Lender was party to credit relationship with them under the Credit Agreement and related Purchase Agreement that were unfair to them for the purposes of Section 140A of the CCA.

I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr H and Mrs G Section 75 claim. 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.”

Responses to my provisional decision

Both parties have responded to my provisional decision. The Lender accepted my position. Mr H responded via the PR with his comments.

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 considered the responses to my provisional position and everything afresh it is my decision that this complaint shouldn't be successful. I shall explain why.

Mr H responded with, in essence, one argument to my provisional decision. He said that the Supplier's representative in this sale was the same person who'd sold him the previous membership he'd purchased (which I've referred to) and that the representatives' "...stance was that our position, having bought the Fractionals, was not as we had thought at the time and that we needed to get out of the contract."

So I've a number of observations about this. Firstly, as I described in my provisional position the evidence shows that Mr H traded in non-fractional timeshare benefits for fractional membership at this point of sale and not fractional for fractional as Mr H seems to suggest here. It is also clear that not only did Mr H and Mrs G trade in the old membership but they also bought additional points so they got significantly enhanced holiday benefits.

Mr H has said what he was told what he thought he had in terms of the previous membership wasn't true. But to be clear someone providing an opinion that one product is better than another isn't sufficient for me to be satisfied that there was a material misrepresentation, nor the further test I'm required in this circumstance to apply which is that such a misrepresentation made the credit relationship unfair.

Mr H and Mrs G haven't provided a detailed statement as to what happened during the sales process or who said what and why that makes a difference. I can also see that following this purchase the following year (Jan 2015) they purchased an additional substantial number of non-fractional points of the same sort he'd traded in at the purchase in May 2014.

If, as Mr H says, he made this purchase (May 2014) because he was told the non-fractional points weren't '*as we had thought at the time*' then I cannot understand why Mr H and Mrs G would then buy more of them afterwards having being told they'd previously been misled about these non-fractional points. Surely if they thought that he'd been misled into buying non-fractional previously that they wouldn't then buy more of them later as they did in February 2015 (in the document they've supplied which is dated November 2016 says this and so does the Lender's final response letter).

So although Mr H suggests this is why they bought fractional in May 2014, bearing in mind their actions at the time of this purchase and latterly I'm not persuaded that it would be fair to uphold this complaint. I don't think Mr H and Mrs G have done enough to satisfy me that the Lender considered their claim unfairly nor have they done enough to explain why they would purchase more non-fractional points having said that they wanted rid of them. I don't consider Mr H's comments on this matter persuasive that the Lender has considered their claim unfairly.

Accordingly I don't see any persuasive reason to deviate from the outcome I reached in my provisional decision for the reasons given in that decision and those above.

My final decision

It is my final decision that I do not uphold Mr H and Mrs G's complaint. Shawbrook Bank Limited has nothing further to do in this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr H to accept or reject my decision before 12 February 2026.

Rod Glyn-Thomas
Ombudsman