

The complaint

Mr B and Ms J'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 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 B and Ms J were members of a timeshare provider (the 'Supplier') – having purchased a product from it previously. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 23 June 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1180 fractional points at a cost of £18,979 (the 'Purchase Agreement'). Fractional Club membership was asset backed – which meant it gave Mr B and Ms J 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. Mr B and Ms J paid for their Fractional Club membership by trading in their earlier membership and taking finance from the Lender (the 'Credit Agreement'). After refinancing an earlier loan, they ended up borrowing £22,748 from the Lender. Mr B and Ms J – using a professional representative (the 'PR') – wrote to the Lender on 5 May 2023 (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 B and Ms J's concerns as a complaint and issued its final response letter on 14 May 2024, 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, thought that Mr B and Ms J's complaint about being party to an unfair credit relationship should not be upheld. Our Investigator also thought that it would not have been unfair or unreasonable of the Lender to have declined Mr B and Ms J's Section 75 claim by relying on the defence available to it under the Limitation Act 1980. Finally, our Investigator also thought Mr B and Ms J's complaint about affordable lending had been made out of time.

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

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

"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 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 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.

I should also say here that whilst I can see that our Investigator found that it would not have been unreasonable or unfair for the Lender to have rejected Mr B and Ms J’s claim on the basis that it had become time-barred under the Limitation Act 1980, the fact remains that the Lender didn’t do so. So here, what I am considering is the fairness of the basis of the decision the Lender did take when declining Mr B and Ms J’s s75 claim.

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 B and Ms J:

1. Told that they had purchased an investment that would “considerably appreciate in value” when that was not true.
2. Told that they would own a share in a property that would increase in value during the membership term when that was not true.
3. Made to believe that they would have access to “the holiday apartment” at any time all year round when that was not true.
4. Told that they could sell the time share back to the resort or easily sell it at a profit.

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 enough 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 Fractional Club membership was misrepresented at the Time of Sale for that reason, I don’t think it’s probable. It’s given little to none of the colour or context necessary to demonstrating that the Supplier made a false statement of existing fact and/or opinion. And as there isn’t any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for that reason, I don’t think it was.

So, while I recognise that Mr B and Ms J 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 140A of the CCA: did the Lender participate in an unfair credit relationship?

I’ve already explained why I’m not persuaded that Fractional Club 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 Mr B and Ms J 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. 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 Time 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 B and Ms J and the Lender.

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

Mr B and Ms J'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 them. 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 Mr B and Ms J 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 them both. I say this in part because I can see that Mr B and Ms J paid off their loan in full less than three years after taking it out.

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 Mr B and Ms J knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for them, 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 Mr B and Ms J suffering a financial loss – such that I can say that the credit relationship in question was unfair on them 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 them, even if the loan wasn't arranged properly. I acknowledge that Mr B and Ms J may have felt that they were subjected to a robust sales process. 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 Fractional Club membership when they simply did not want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr B and Ms J made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr B and Ms J'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 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 B and Ms J'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 Time of Sale – saying, in summary, that Mr B and Ms J were told by the Supplier that Fractional Club 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 Mr B and Ms J 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 B and Ms J 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 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 membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr B and Ms J, 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 B and Ms J 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 Mr B and Ms J 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 Mr B and Ms J and the Lender that was 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 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 Mr B and Ms J 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 a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

What I am considering here, though, is whether any such positioning of the Fractional Club membership as an investment was material to Mr B and Ms J's decision to purchase it (and in turn, therefore, to enter into the Credit Agreement). Mr B and Ms J's comments do not lead me to think that it was.

I've considered the chronology of the complaint including when Mr B and Ms J/their PR complained to the Lender, the date they gave authority to the PR to represent them, and when they gave their 'witness statement'. The PR sent the letter of complaint to the Lender on 5 May 2023 and set out, amongst other things, that it considered the timeshare had been sold as an investment; no witness statement was attached. Mr B and Ms J's witness statement is dated 31 December 2023, which is almost eight months after the dispute was first raised with the Lender and some eight and a half years after the Time of Sale. The timing of this is critical as I would've expected to see such evidence – if it was available – to be lodged along with the dispute at the outset; but this didn't happen, and it's not clear why. The witness statement is the only account I have from Mr B and Ms J.

I'm conscious that it was only after the judgment in Shawbrook & BPF v FOS was handed down in June 2023, that Mr B and Ms J stated that the Supplier told them or led them to believe that the Fractional Club membership offered them the prospect of a financial gain – in other words this is when they first said that they were told "that buying into their Fractional property would be as an investment. They said it was not regarded as a timeshare for that reason. They told us that the agreement would last 19 years and that once it ended, the property would be sold by them and we would receive a percentage of the selling price". And I'm cognisant that the more time that passes between the event complained about and a complaint being made, the more risk there is of recollections being vague, inaccurate and influenced by discussions with others.

In this case, given Mr B and Ms J's witness statement post-dated the judgment in Shawbrook & BPF v FOS - which established this Service's approach to these complaints – I simply can't rule out the latter. In the circumstances, and on balance, I think there's a high risk that Mr B and Ms J were influenced by discussions they had with others. Put simply, I can't put enough weight on their account that would enable me to uphold this complaint.

Here, I'm also hindered in assessing the strength of the submissions by not having much detail or context either about what Mr B and Ms J were told about how they would make a financial gain/profit from Fractional Club membership. Their recollection that they were told the agreement would last 19 years at the end of which the property would be sold and they would receive a percentage of the purchase price, is no more than a description of how the time share worked. They say nothing in their statement about how the value of the property was meant to increase in value over time.

Direct testimony from Mr B and Ms J, in full and in their own words, is important in a case like this, because it allows me to assess credibility and consistency, to know precisely what was supposedly said, and to understand the context in which it was supposedly said. It's also important for the decision-maker to be able to see that the Letter of Complaint genuinely reflects the consumer's testimony. Again, that simply isn't possible in this case.

Nevertheless, I can't rule out the possibility that Mrs B may have been 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 B and Ms J themselves do not 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 they ultimately made.

I have also borne in mind that Mr B and Ms J were upgrading from their existing trial membership, which only offered a limited number of holidays over a three-year period, to full membership. This serves to underline Mr B and Ms J's interest in the holiday benefits the membership offered, which leads me to think they would have gone ahead with the purchase even if it had not been presented to them as an investment opportunity.

I've thought too about the PR's response to our Investigator's view which is principally concerned with comments about the marketing and sale of the time share as an investment but – as I have said above – I accept that it is possible that this is, indeed, what happened.

But, as I have also explained here, it does not automatically follow that any such sales practises rendered the credit relationship between Mr B and Ms J and the Lender unfair for the purposes of s140A. And also, for the reasons I have given here, I can't put sufficient weight on Mr B and Ms J's account such that I could reasonably uphold his complaint.

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 B and Ms J'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 B and Ms J and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).”

In conclusion, given the facts and circumstances of this complaint, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mr B and Ms J's Section 75 claim, and I was not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

The Lender responded to the PD and accepted it.

The PR did not respond. 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 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.

As the Lender has replied to state it accepts my provisional decision and as the PR has not replied on behalf of Mr B and Ms J (a reminder from this Service was about the deadline date for responding was sent) there are no further comments for me to consider here. It follows that my provisional findings now form part of this, my final decision.

As I stated in my provisional decision, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr B and Ms J’s Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate Mr B and Ms J.

My final decision

My final decision is that I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B and Ms J to accept or reject my decision before 11 February 2026.

Claire Woollerson
Ombudsman