DRN-6100161

The complaint

Mr and Mrs T'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 claims under Section 75 of the CCA.

What happened

Mr and Mrs T were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the products at the centre of this complaint is their membership of timeshares that I'll call the 'Fractional Club' and the 'Signature Collection' – which they bought on 9 August 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 4,140 Fractional Club points at a cost of £2,846 and 4,400 Signature Collection fractional points at a cost of £18,675 (the 'Purchase Agreement').

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

Signature Collection membership was also asset backed – but included other benefits, namely more luxurious accommodation than that which was available through their existing memberships, and a right to stay in the Allocated Property while on holiday, with guaranteed availability for this on a certain date.

Mr and Mrs T paid for their Fractional Club membership by trading in their existing timeshare and taking finance of £21,522 from the Lender (the 'Credit Agreement').

Mr and Mrs T – using a professional representative (the 'PR') – wrote to the Lender on 15 June 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 Mr and Mrs T's concerns as a complaint and issued its final response letter on 31 August 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, upheld the complaint on its merits.

The Investigator thought that the Supplier had marketed and sold Fractional Club and Signature Collection memberships as an investment to Mr and Mrs T at the Time of Sale in breach of Regulation 14(3) of the Timeshare Regulations. And given the impact of that breach on their purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mr and Mrs T was rendered unfair to them for the purposes of section 140A of the CCA.

The Lender 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') dated 14 November 2025. In that decision, I said:

What I've provisionally 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 done that, 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 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 Fractional Club and Signature Collection membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs T were:

(1) *told by the Supplier that Fractional Club and Signature Collection membership had a guaranteed end date when that was not true.*
(2) *told by the Supplier that Fractional Club and Signature Collection membership was an "investment" when that was not true.*

However, telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. After all, a share in an allocated property was, by its very nature, an investment. And while, as I understand it, the sale of the Allocated Property could be postponed in certain circumstances according to the Fractional Club and Signature Collection Rules, Mr and Mrs T say little to nothing to persuade me that they were given a guarantee by the Supplier that the Allocated Properties would be sold on a specific date when such a promise would have been impossible to stand by given the inevitable uncertainty of selling property some way into the future. And as there's nothing else on file to support the PR's allegation, I'm not persuaded that there was a representation by the Supplier on the issue in question that constituted a false statement of fact.

So, while I recognise that Mr and Mrs T and the PR have concerns about the way in which Fractional Club and Signature Collection 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 and Mrs T 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 and Mrs T 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 a number of occasions. 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 also says on Mr and Mrs T's behalf that the Supplier breached the Purchase Agreement because it went into liquidation. And if certain parts of the Supplier's business were put into administration, I can understand why the PR is alleging that there was a breach of the Purchase Agreement as a result. However, neither Mr and Mrs T nor the PR have said, suggested or provided evidence to demonstrate that they are no longer:

1. *a member of the Fractional Club or Signature Collection;*
2. *able to use their Fractional Club and Signature Collection membership to holiday in the same way they could initially; and*
3. *entitled to a share in the net sales proceeds of the Allocated Property when their Fractional Club and Signature Collection membership ends.*

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr and Mrs T 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 an unfair credit relationship?

I've already explained why I'm not persuaded that Fractional Club and Signature Collection 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 and Mrs T 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 Mr and Mrs T and the Lender.

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

Mr and Mrs T's complaint about the Lender being party to an unfair credit relationship was and is made for several reasons.

The PR says, for instance that:

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

However, as things currently stand, neither of these strike me as reasons why this complaint should succeed.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs T 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.

I acknowledge that Mr and Mrs T 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 Fractional Club and Signature Collection 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 memberships during that time. And with all of that being the

case, there is insufficient evidence to demonstrate that Mr and Mrs T made the decision to purchase Fractional Club and Signature Collection membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr and Mrs T'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 now says the credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club and Signature Collection 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

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs T 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 and Signature Collection 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 and Signature Collection. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club and Signature Collection membership was marketed or sold to Mr and Mrs T 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 and Signature Collection membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

And there is competing evidence in this complaint as to whether Fractional Club and Signature Collection 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 and Signature Collection as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs T, 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.

But 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 and Signature Collection membership as an investment. So, I accept that it's equally possible that Fractional Club and Signature Collection membership was marketed and sold to Mr and Mrs T 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 (if there was one) had on the fairness of the credit relationship between Mr and Mrs T and the Lender under the Credit Agreement and related Purchase Agreements, as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs T 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 Agreements 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 and Signature Collection membership was not an important and motivating factor when Mr and Mrs T decided to go ahead with their purchase.

It's of course possible that Mr and Mrs T were interested in both holidays and the investment element of the memberships – and this wouldn't be surprising given the nature of the products at the centre of this complaint. I say this because along with their complaint about the memberships being sold as an investment Mr and Mrs T were also clear that they were unhappy with the availability of holidays, and that the access they felt they received did not fit their expectations. So, I'm at least satisfied that the products were not purchased solely as a means of investment.

From my reading, much of their "client statement" suggests that availability and access were the primary motivations in their interactions with the Supplier. In their client statement they say:

> *"At this meeting, we expressed to the representatives at [Supplier] that we were dissatisfied with our purchase, as we had found that* ***we were unable to get any availability for holidays****, and that therefore, this timeshare was no longer working for us. At this meeting, we were told that it would be possible for us to buy into the Signature Collection of resorts with [Supplier] which was the brand-new accommodation that was being built. We were assured that this was, in a way,* ***a way out of this timeshare****, as within a number of years, it would be possible to resell this timeshare for more than we had paid for it, and therefore effectively, we would get free holidays. We were assured that because this was a fixed week,* ***we would be guaranteed holidays*** *there each year, and could also exchange these weeks for flexible times. Therefore, feeling pressured* ***as previously we had found the Fractionals with [Supplier] were not working for us****, we agreed to this purchase." (My emphasis)*
>
> *"However, since purchasing these timeshare agreements with [Supplier],* ***we have found that we are never able to access the availability that we need*** *(despite various upgrades), due to the fact that the resorts are always fully booked –* ***this is not the flexibility that we were promised****." (My emphasis)*

So, having been given the opportunity to set out what impacted their enjoyment of their memberships and set out their reasons for wanting to purchase the products, Mr and Mrs T only briefly mention the investment potential. And in doing so the emphasis appears to be more around the promise that the sale would be "a way out of this timeshare" which they were unhappy with due to availability issues. The promise of improved availability compared to their existing membership appears to have far more importance. Their concerns regarding

availability are also more detailed than their recollections around the investment element and to my reading appear to have been the primary motivation for making their purchase. So, I'm reasonably satisfied on the balance of the evidence available to me that Mr and Mrs T weren't primarily motivated by the prospect of financial gain. In my view, their purchase was largely motivated by the prospect of improved holiday availability, rather than any investment element.

For clarity, I'm satisfied that a misrepresentation was unlikely to have taken place around availability. But that doesn't dissuade me from the conclusion that Mr and Mrs T's own interpretation of the memberships, and their purchasing decision, was driven primarily by this perceived benefit. I think the evidence available to me suggests they would have pressed ahead with their purchase irrespective of whether there had been a breach of Regulation 14(3).

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club and Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs T's decision to purchase Fractional Club and Signature Collection 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 and Mrs T 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 Time of Sale

The PR says that Mr and Mrs T were not given sufficient information at the Time of Sale by the Supplier in order to make an informed choice.

It isn't clear what information the PR thinks the Supplier failed to provide at the Time of Sale. But 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.

So, while I acknowledge that it is also possible that the Supplier did not give Mr and Mrs T sufficient information, in good time, in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'), even if that was the case, neither Mr and Mrs T nor the PR have persuaded me that they were deprived of information that would have led them to make a different purchasing decision at the Time of Sale. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why they led to a financial loss.

Mr and Mrs T's Commission Complaint

I note that one of Mr and Mrs T'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 I know more about the commission arrangements relevant to Mr and Mrs T's complaint, I will address this aspect of the complaint before finalising my thoughts overall.

Conclusion

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

My provisional decision

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

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 and Mrs T's Section 75 claims, 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.

Following my provisional decision, I also communicated how I was not persuaded that Mr and Mrs T's credit relationship with the Lender wasn't unfair to them for reasons relating to the commission arrangements between it and the Supplier.

The Lender responded to the PD and accepted it.

The PR also responded – they did not accept the PD but confirmed that they had nothing further to add.

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 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 accepted my PD and the PR has confirmed it has nothing further to add to it (or my further communication detailing how I wasn't persuaded that Mr and Mrs T's credit relationship with the Lender was unfair to them for reasons relating to the commission arrangements between it and the Supplier) I can confirm that I see no reason to depart from my provisional findings.

So 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 Mr and Mrs T's Section 75 claims, 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 them.

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 T and Mr T to accept or reject my decision before 13 April 2026.

Paul Clarke
Ombudsman