DRN-6104015

The complaint

Mr and Mrs S'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.

Background to the complaint

Mr and Mrs S purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 8 March 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 910 fractional points at a cost (after trading in their trial membership) of £12,366 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs S 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 and Mrs S paid for their Fractional Club membership by taking finance of £16,516 from the Lender in their joint names (the 'Credit Agreement'). This loan also consolidated an earlier loan which had financed their purchase of trial membership. This new loan was settled in full on 26 November 2019.

Mr and Mrs S – using a professional representative (the 'PR') – wrote to the Lender on 27 August 2025 (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 S's concerns as a complaint and issued its final response letter on 30 September 2025, 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. In particular, he said that Mr and Mrs S's section 75 claim had been time-barred under the Limitation Act 1980, and so the Lender had not been obliged to uphold it.

Mr and Mrs S disagreed with the investigator's assessment and asked for an ombudsman's decision – which is why it was passed to me.

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 parties are doubtless familiar with the DISP 3.6.4R provisions and the legal and regulatory context relevant to this complaint, which has been shared in several hundred

decisions our service has published on very similar complaints. But noting the aspects relating to payment of commission, the following regulatory rules/guidance[1] are also relevant:

- The Consumer Credit Sourcebook ("CONC")[2] content at the material time, notably CONC 3.7.3R, CONC 4.5.3R, and CONC 4.5.2G;
- Principles 6, 7, and 8 of the FCA's Principles for Businesses ("PRIN").[3]

CONC provisions sit alongside firms' wider obligations such as those in PRIN.

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 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 and the Limitation Act

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 a breach of contract by the supplier.

However, under the Limitation Act an action for misrepresentation has to be brought within six years of when the misrepresentation was made. Since Mr and Mrs S complained more than six years after the Time of Sale, they were too late, and so I don't think the Lender needed to consider their claim under section 75.

However, I can still consider their allegation of misrepresentation in the context of unfairness under section 140A. And a new time limit for each alleged breach of contract begins at the time of each breach. So I can still consider any alleged breach that happened not more than six years before the Letter of Complaint.

Section 75 of the CCA: the Supplier's breach of contract

Mr and Mrs S say that they could not holiday where and when they wanted to. That was framed, in the Letter of Complaint, as part of their complaint about the fairness or otherwise of their credit relationship with the Lender under section 140A of the CCA, and as a misrepresentation under section 75. However, on my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

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

[1] "R" denotes a rule; "G" denotes guidance.
[2] The relevant rules, guidance and principles can be found in the Financial Conduct Authority ("FCA") *Handbook*, available on its website.
[3] *Ibid*.

been signed by Mr and Mrs S states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday in every year from 2018 to 2025. 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.

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

Having considered the entirety of the credit relationship between Mr and Mrs S 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 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. Evidence provided by both parties on what was likely to have been said and/or done at the Times of Sale; and
4. The inherent probabilities of the sales given their circumstances.

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

In doing so, I have considered the reverse burden of proof under section 140B(9). That says:

> *"If … the debtor or a surety alleges that the relationship between the creditor and the debtor is unfair to the debtor, it is for the creditor to prove to the contrary."*

However, that does not mean it is sufficient (as the PR seems to contend) simply to suggest unsubstantiated allegations of fact and require that the Lender disprove them else the credit relationship be deemed unfair. This issue was considered in the judgment in *Promontoria (Henrico) Ltd v. Gurcharn Samra* [2019] EWHC 2327 (Ch), where the court held (at paragraph 26):

> *"…the onus is on the claimant[4] to show, to the normal civil standard, that the relationship is not unfair because of any of the reasons set out in s 140A(1)(a)-(c). Whether it is so unfair is a matter for the court's overall judgment having regard to all the relevant circumstances and matters, including matters relating (i.e. personal) to the creditor and debtor. This onus on the claimant does not however mean, in my judgement … that where Mr Samra[5] makes allegations of fact on which he relies he does not have the burden of proving them to the normal civil standard. The onus placed on the creditor is as to the relationship between it and the debtor, and does not have the effect that factual allegations*

[4] In this case the creditor answering a claim of an unfair credit relationship arising out of an overdraft facility.
[5] In this case the borrower making an allegation that there was an unfair credit relationship.

made by Mr Samra must be accepted unless they can be positively disproved by contrary evidence." [6]

So in summary, it is for Mr and Mrs S to prove the facts on which they rely, and then for the Lender to show that the proven facts did not cause unfairness.[7]

Misrepresentation

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 and Mrs S were told by the Supplier that Fractional Club membership was an "investment" when that was not true.

But it was true. 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.

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

Mr and Mrs S's complaint about the Lender being party to an unfair credit relationship was and is made for several other reasons.

They include, for various reasons, the allegation that the Supplier misled Mr and Mrs S and carried on unfair commercial practices under regulations 5 and 6 of the CPUT regulations.[8] However, as regulations 5 and 6 state, commercial practices only amount to misleading actions or omissions if, in addition to satisfying one or more of the specific matters set out in those provisions, they cause or are likely to cause the average consumer to take a transactional decision they would not have taken otherwise. And as I haven't seen enough evidence to persuade me that, if there were any such actions or omissions at the Time of Sale (which I make no formal finding on), they led Mr and Mrs S to make the purchasing decision they did, I'm not persuaded that anything done or not done by the Supplier amounted to an unfair commercial practice for the purposes of those provisions.

The PR also alleges that the Supplier acted unfairly under regulation 7 Schedule 1 of the CPUT regulations. But given the limited evidence in this complaint, I am not persuaded that the Supplier did.

In addition, the PR also says that:

1. Mr and Mrs S were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale;
2. there was one, or more, unfair contract terms in the Purchase Agreement.

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[6] I note that in *Wilson v Clydesdale Financial Services Ltd t/a Barclays Partner Finance* [2021] (unreported), the court also took the view that the burden is on the debtor to prove on the balance of probabilities *the facts* that purportedly create the unfairness. It is then that the lender's burden of proof that requires it to prove *the relationship* was not unfair kicks in. While I do not suggest this offers legal precedent, the subject matter of that case was a fractional timeshare sale, and given the similarities I have taken the same approach when considering the facts in this case.

[7] In *Patel v Patel* [2009] EWHC 3264 (QB), the court held that a determination of whether or not the relationship complained of was unfair had to be made *"having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination"*, which was the date of the trial in the case of an existing relationship (or otherwise the date the relationship ended).

[8] The Consumer Protection from Unfair Trading Regulations 2008.

And in his witness statement, Mr S says that no creditworthiness checks were carried out to see if he could afford the loan. The PR did not pursue that point in the Letter of Complaint, but I will consider it anyway (not as a free-standing complaint issue, but just as another argument about unfairness under section 140A).

However, as things currently stand, none of these strike me as reasons why this complaint should succeed.

Affordability checks

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. Quite the contrary – I've seen their loan application, which includes Mr and Mrs S's gross annual incomes, the value of their home, their monthly mortgage payments, their employer's details, and the time each of them had spent with employer. So I'm satisfied that they were asked about their finances, and that they have just forgotten about that – which is understandable, because the witness statement was made more than seven years after the Time of Sale.

From that evidence, I also infer that credit checks were most likely carried out too.

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 also have to be satisfied that the money lent to Mr and Mrs S 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 Mr and Mrs S. As I've said, they settled the loan in 2019.

Pressure

I acknowledge that Mr and Mrs S 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 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.

Furthermore, they actually left the sales presentation without buying anything. They made their purchase the next day – and only after being offered an iPad and an extra holiday for free. And five days later, according to an entry in the Supplier's contact notes dated 13 March 2018, Mr S went back to the Supplier to discuss varying the number of points and the terms of payment, and to book a holiday.

With all of that being the case, I do not believe that Mr and Mrs S made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Unfair contract terms

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, 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 can't see that any such terms were operated unfairly against Mr and Mrs S in practice, nor that any such terms led them to behave in a certain way to their detriment. And with that being the case, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

Overall, therefore, I don't think that Mr and Mrs S'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 why the PR now 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 a 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 and Mrs S'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 and Mr and Mrs S say that the Supplier did exactly that at the Time of Sale – saying, in summary, that they 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 and Mrs S 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 and Mrs S 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 and Mrs S, 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.

For example, the Member's Declaration, which Mr and Mrs S both signed, says in paragraph 5:

> *"We understand that the purchase of our Fraction is for the primary purpose of holidays and is not specifically for direct purposes of a trade in and that* [the Supplier] *makes no representation as to the future price or value of the Fractional Rights …"*

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 and Mrs S 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 Mr and Mrs S 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 and Mrs S 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 and Mrs S and the Lender that was unfair to them and warranted relief as a result, then an important consideration is whether the Supplier's breach of regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement.

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 and Mrs S decided to go ahead with their purchase. Although Mr S does say in his witness statement that they were told that the membership would be a profitable investment, he does not describe it as being the reason they bought it; rather he says they were *"intimidated"* or *"forced"* into the purchase. Furthermore, I regret to say that I do not think his recollection is entirely reliable. This is partly due to some reasons I mentioned earlier – the fact that he was recalling events more than seven years later, and the fact that he did not remember being asked about their finances at the Time of Sale – but also because of another matter.

In paragraphs 17,18, 26, 27, 30 and 31 of his statement, Mr S says that they were told that the Fractional Club membership would last for 16 or 18 years (his account varies as to the precise number of years, but is otherwise consistent about the fixed term). But he goes on to say in paragraph 34 that they were then told (apparently before signing the contracts) that

Club membership was actually for life. And I think that does not ring true. It does not make sense to suppose that the salesman would say that after saying so many times that membership was for fixed duration, or after explaining that at the end of the term the Allocated Property would be sold (whether or not for a profit) and the proceeds shared among the Club members, or after giving Mr and Mrs S paperwork which sets out the fixed duration and the proposed sale date. Nor does it make sense to me that after being told that membership was for life, Mr and Mrs S would still sign the Purchase Agreement and the Credit Agreement anyway; nor that they would still expect to make a profit from a sale which apparently would never happen after all. There is no investment if there was never going to be a sale. So for all of these reasons, I don't think I can say that this witness statement is reliable evidence of Mr and Mrs S's motivation for buying, or of what was said to them by the Supplier's sales representative at the Time of Sale.

That doesn't *necessarily* mean that Mr and Mrs S weren't at all 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 – and I don't think it is true that they were ever told that membership was for life and that the sale wouldn't actually happen. But as Mr and Mrs S 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.

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 and Mrs S'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 and Mrs S 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 S were not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership.

I acknowledge that it is possible that the Supplier did not give Mr and Mrs S 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 and Mrs S 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 facts and circumstances.

The PR has not raised any concerns about undisclosed commission in this case, either with the Lender or with our service, so I have not considered it here in detail. But having still thought about whether undisclosed commission is likely to have led to unfairness, and having had regard to the judgement of the Supreme Court last year in *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 (which is now the leading case on that subject), I do not think that it did.

Conclusion

In conclusion, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with Mr and Mrs S 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 final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 9 March 2026.

Richard Wood
Ombudsman