DRN-6119498

The complaint

Mr and Mrs R 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 R was the member of a timeshare provider (the 'Supplier') – having purchased several products from it over time. But the product at the centre of this complaint is their purchase of timeshares on the dates below:

- Fractional Property Owners Club ('FPOC') membership including 5,060 annual fractional points on 12 June 2013 for £7,704 after trading in their existing timeshare ('Purchase Agreement 1').

- Signature Collection ('SC') membership equivalent to 2,200 annual fractional points on 8 June 2015 for £15,416 – having traded in some of their existing fractional points. ('Purchase Agreement 2').

- SC membership equivalent to 1,800 bi-annual odd-year fractional points on 4 January 2016 for £8,435 – having traded in 810 of their existing fractional points. ('Purchase Agreement 3').

- SC membership equivalent to 1,800 annual fractional points on 16 June 2019 for £14,629 having traded in 1,100 of their existing fractional points ('Purchase Agreement 4').

  (which, when appropriate, I'll simply refer to as the 'Purchase Agreements')

As this complaint is concerned with the purchases on the above dates, those are the 'Times of Sale' for the purposes of my decision.

SC membership provided the right to stay in a specified holiday apartment in a certain week or weeks. This could be exchanged for fractional points each year, to be used to book accommodation with the Supplier or its affiliates.

FPOC membership only provided the specified number of fractional points.

Both FPOC and SC membership was asset backed – which meant it gave Mr and Mrs R 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 1, 2 3 and 4' or, when appropriate, the 'Allocated Properties') after their membership term ends.

Mr and Mrs R paid for their fractional points by taking the following amounts of finance of from the Lender:

- £ 7,704 on 12 June 2013 (‘Credit Agreement 1’)
- £15,416 on 8 June 2015 (‘Credit Agreement 2’)
- £8,435 on 4 January 2016 (‘Credit Agreement 3’)
- £14,629 on 16 June 2019 (‘Credit Agreement 4’)

(which, when appropriate, I’ll simply refer to as the ‘’Credit Agreements’)

Mr and Mrs R – using a professional representative (the ‘PR’) – wrote to the Lender on 11 May 2022 (‘Letter of Complaint 1’) to raise a number of different concerns about Credit Agreement 2, 3 and 4. On 23 August 2022 it made a further complaint (‘Letter of Complaint 2’) about Credit Agreement 1. 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 treated those concerns as a complaint and rejected it.

The complaint was referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, said the complaint about an unfair relationship and irresponsible lending arising from Credit Agreement 1 was outside of our jurisdiction because it was made too late, and rejected the remaining complaints on their merits.

Mr and Mrs R disagreed with the Investigator’s assessment and asked for an Ombudsman’s decision – which is why it was passed to me. The PR has indicated it accepts our Investigator’s assessment in terms of our jurisdiction and does not require a detailed assessment of its complaint about undisclosed commission (which ranged from no commission to 10% of the amount borrowed in this instance).

As such this decision deals with the merits of the remaining parts of the complaint which are within my jurisdiction to consider.

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.

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.

Having done that, I do not uphold this complaint – for similar reasons to those given by the Investigator. The PR is familiar with our approach to this type of complaint and will know that often the outcome depends on the consumer’s own evidence (their recollections of the sales).

Section 75 of the CCA

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") if 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.

Credit Agreements 1, 2 and 3

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

As a general rule, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 (the 'LA') as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court. So, it is relevant to consider whether Mr and Mrs R's Section 75 claim for misrepresentation was time-barred under the LA before he put it to the Lender.

As I mentioned above, a claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim Mr and Mrs R could make against the Supplier.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued (see Section 2 of the LA).

But a claim, like the one in question here, under Section 75 is also 'an action to recover any sum by virtue of any enactment' under Section 9 of the LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was the Times of Sale. I say this because Mr and Mrs R entered the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which they say were relied upon. And as the loan from the Lender was used to help finance the purchase, it was when they entered into the Credit Agreements that they suffered a loss.

Mr and Mrs R first notified the Lender of his Section 75 claim on 23 August 2022. And as more than six years had passed between the Time of Sale and when that claim was first put to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mr and Mrs R's concerns about the Supplier's alleged misrepresentations.

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 Agreements, the Lender is also liable.

Mr and Mrs R say that they could not holiday where and when they wanted to. On my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, meaning it could be viewed as potentially breaching the Purchase Agreements. It is not clear precisely when this was alleged to have happened, but if it happened within six years of the time the complaint was first made, such a claim would not have been made too late under the LA.

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 R 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 several 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 Agreements.

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

Credit Agreement 4

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

It was said in the Letter of Complaint that SC membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs R were:

(1) Told by the Supplier that SC membership had a guaranteed end date when that was not true.

(2) Told by the Supplier that they owned a 'fraction' of the Allocated Property when that was not true as it was owned by a trustee.

(3) Told by the Supplier that SC membership was an "investment" when that was not true.

Neither the PR nor Mr and Mrs R have set out in any detail what words and/or phrases where allegedly used by the Supplier to misrepresent SC membership for the reason given in points 1 or 2. However, the PR says that such representations were untrue because the Allocated Property was legally owned by a trustee and there was no indication of what duty of care it had to actively market and sell the property. Further, there is no guarantee that any sale will result at all, leaving prospective members to pay their annual management charge for an indefinite and unspecified period.

However, I cannot see why the phrases in points 1 or 2 above would have been untrue at the Time of Sale even if it was said. It seems to me to reflect the main thrust of the contracts Mr and Mrs R entered into. And while, under the relevant Rules, the sale of the Allocated Property could be postponed for up to two years by the 'Vendor'[1], longer than that if there were problems selling and the 'Owners'[2] agreed, or for an otherwise specified period provided there was unanimous agreement in writing from the Owners, that does not render the representation above untrue. So, I am not persuaded that the representation above constituted a false statement of fact even if it was made.

As for point 3, it 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 and Mrs R 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 and Mrs R weren'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 and Mrs R and the PR have concerns about the way in which SC 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 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 R 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 R 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 several 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.

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[1] Defined in the FPOC Rules as "CLC Resort Developments Limited".
[2] Defined in the FPOC Rules as "a purchaser who has entered into a Purchase Agreement and has been issued with a Fractional Rights Certificate (which shall include the Vendor for such period of time until the maximum number of Fractional Rights have been acquired)."

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

Credit Agreements 2,3 and 4

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

I've already explained why I'm not persuaded that SC 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 relationships between Mr and Mrs R and the Lender along with all of the circumstances of the complaint, I don't think the credit relationships 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.

6. Where relevant, any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the relevant credit relationships between Mr and Mrs R and the Lender.

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

Mr and Mrs R's complaint about the Lender being party to unfair credit relationships was and is made for several reasons.

The PR says, for instance, that:

1. Mr and Mrs R were pressured by the Supplier into purchasing SC membership at the Time of Sale.

2. The right checks weren't carried out before the Lender lent to Mr and Mrs R.

3. The loan interest was excessive.

4. Mr and Mrs R were not given a choice of lender by the Supplier.

However, none of this strikes me as a reason why this complaint should succeed.

I acknowledge that Mr and Mrs R 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 presentations that made them feel as if they had no choice but to purchase SC memberships when they simply did not want to. they were also given 14-day cooling off periods 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 R made the decision to purchase SC memberships because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

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 R was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationships 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 the Mr and Mrs R.

The PR has not explained how, if it were true, Mr and Mrs R not being offered a different lender to pay for SC membership caused them any unfairness or financial loss. Mr and Mrs R were aware of the interest rate set out on the face of the Credit Agreements, as well as the term of the loans and the monthly repayments, so they understood what it was they was/were taking out. Further, I don't think the rate of interest was excessive, compared either to other rates available from other point-of-sale lenders or on the open market, so I can't say it would be fair or reasonable to tell the Lender to do anything because of this.

Overall, therefore, I don't think that Mr and Mrs R credit relationships with the Lender were 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 relationships with the Lender were unfair to them. And that's the suggestion that SC membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

<u>The Supplier's alleged breach of Regulation 14(3) of the Timeshare Regulations</u>

The Lender does not dispute, and I am satisfied, that Mr and Mrs R's SC 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 SC 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 Properties clearly constituted investments as they offered Mr and Mrs R 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 SC 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 SC. They just regulated how such products were marketed and sold.

To conclude, therefore, that SC membership was marketed or sold to Mr and Mrs R 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 SC 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 SC 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, the Supplier made efforts to avoid specifically describing membership of the SC as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs R, the financial value of their share in the net sales proceeds of the Allocated Properties 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 SC membership as an investment. So, I accept that it's equally possible that SC membership was marketed and sold to Mr and Mrs R as an investment in breach of Regulation 14(3).

However, whether 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 issue for the purposes of this decision.

Would the credit relationships between the Lender and Mr and Mrs R 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 relationships between Mr and Mrs R and the Lender under the Credit Agreements 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 credit relationships between Mr and Mrs R 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 Agreements and the Credit Agreements is an important consideration.

But on my reading of the evidence before me, the prospect of a financial gain from SC membership was not an important and motivating factor when Mr and Mrs R decided to go ahead with their purchases. Their unsigned and undated statement provided on 12 January 2024 (and the PR says created in September 2023) did not describe each sale. Of the Time of Sale 1 it said only that the Supplier *"suggested that Fractional Timeshares would be better as they only ran for about 17 years and would then be sold, we would then get back the fraction of the overall sale price."*

That seems to merely describe the asset-backed nature of FPOC and SC membership. It does not say that the Supplier told Mr and Mrs R nor led them to believe that they might make a profit from any of their purchases. So, Mr and Mrs R's recollections do not make me think that they purchased any of their timeshares because they hoped or expected to make a profit.

That doesn't mean they weren't interested in a share in the Allocated Properties. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs R themselves don't persuade me that their purchases were motivated by their shares in the Allocated Properties 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 decisions Mr and Mrs R ultimately made.

The PR provided a call note dated 17 December 2021 which does mention making a profit. But the statement appears to be from Mr and Mrs R themselves, rather than something written by the PR. And so, if that had been what they were told and it was material to their decision to purchase I think they would've mentioned it in their statement.

On balance, therefore, even if the Supplier had marketed or sold the SC membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs R's decisions to purchase SC membership at the Times of Sale were 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 purchases whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationships between Mr and Mrs R and the Lender were 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 and Mrs R were not given sufficient information at the Times of Sale by the Supplier 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 and Mrs R sufficient information, in good time, on the various charges they could have been subject to as SC 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 R nor the PR have persuaded me that they would not have pressed ahead with their purchase had the finer details of the SC'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 and Mrs R'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 relationships with them under the Credit Agreements and related Purchase Agreements 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 and Mrs R Section 75 claims. 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 I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 27 February 2026.

Phillip Lai-Fang
Ombudsman