

The complaint

Mrs B'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 her 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

Mrs B was the member of a timeshare provider (the 'Supplier') – having previously purchased a product from it, which was financed by another lender. But the product at the centre of this complaint is Mrs B's membership of a timeshare that I'll call the 'Fractional Club' – which she bought on 28 November 2012 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 4140 fractional points at a cost of £13,500 (the 'Purchase Agreement'). Mrs B traded in an existing membership. Mrs B bought the membership with Mr B, but sadly, he has since passed away.

Fractional Club membership was asset backed – which meant it gave Mrs B 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 her membership term ended.

Mrs B paid for her Fractional Club membership by taking finance of £13,500 from the Lender (the 'Credit Agreement').

Mrs B – using a professional representative (the 'PR') – wrote to the Lender on 10 December 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 Mrs B's concerns as a complaint and issued a rejection letter on 9 February 2022 rejecting it on every ground, although it did not issue a final response within the relevant regulator's timeframe.

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. Mrs B 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 20 January 2026. In that decision, I said:

'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.'

I'd also like to offer my sincere condolences to Mrs B for the loss of Mr B.

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

Mrs B said that the timeshare supplier misrepresented the nature of the membership when he bought it and that she has a claim for misrepresentation against the Supplier. Under s.75 CCA, the Lender could be jointly liable for the alleged misrepresentations made by the Supplier.

The Lender concluded that any claim brought by Mrs B for any alleged misrepresentations was made too late. I have considered that argument and, having done so, I agree with what the Lender has said. For the avoidance of doubt, I have not decided whether the limitation period has expired as that would be a matter for the courts should a legal claim be litigated. Rather, I have considered whether the Lender acted fairly in turning down the claim.

Our service normally thinks it would be fair and reasonable for a creditor to rely on the LA as an answer to a claim under s.75 CCA. This is because it would not normally be fair to expect lenders to look into a claim that has been made outside of the limitation period, so long after the liability arose and after a limitation defence would have become available in court. So I think it is relevant to consider whether the Lender has a limitation defence under the LA when thinking about a fair answer to Mrs B's complaint.

It was held in Green v. Eadie & Ors [2011] EWHC B24 (Ch) that a claim under s.2(1) of the Misrepresentation Act 1967 is an action founded on tort for the purposes of the LA; therefore the limitation period expires six years from the date on which the cause of action accrued (s.2 LA). Here Mrs B brought a like claim against the Lender under s.75 CCA and the limitation period for the corresponding like claim would be the same as the underlying misrepresentation claim. Therefore, the limitation period for the s.75 claim expires six years from the date on which the cause of action accrued.

The date on which a 'cause of action' accrued is the point at which Mrs B entered into the agreement to buy the timeshare. It was at that time that she entered into an agreement based, she says, on the misrepresentations of the Supplier and suffered a loss. Mrs B says, had the misrepresentations not been made, she would not have bought the timeshare. And it was on that day that she suffered a loss, as she took out the loan agreement with the Lender that she was bound to and would have never taken out but for the misrepresentations.

It follows, therefore, that the cause of action accrued in November 2012, so Mrs B had six years from then to bring a claim. But she did not make a claim against the Lender until October 2021, which was outside of the time limits set out in the LA. So, I think the Lender acted fairly in turning down this misrepresentation claim.

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

I've already explained why I think it was reasonable for the Lender to turn down Mrs B's misrepresentation claim. 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 Mrs B 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 in relation to Fractional Club membership, 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 Mrs B and the Lender given her circumstances at the Time of Sale.

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

Mrs B'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 Mrs B. 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 Mrs B was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship with the Lender was unfair to her for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mrs B.

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 Mrs B knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for her, 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 Mrs B suffering financial loss – such that I can say that the credit relationship in question was unfair on her 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 Mrs B, even if the loan wasn't arranged properly.

The PR also says that there was one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Mrs B in practice, nor that any such terms led her to behave in a certain way to her detriment, 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.

I acknowledge Mrs B may have felt weary after a sales process that went on for a long time.. But I'm not persuaded that Mrs B has provided sufficiently persuasive evidence about what was said and/or done by the Supplier during the sales presentation that made her feel as if she had no choice but to purchase Fractional Club membership when she simply did not want to – especially given she was upgrading a previous membership. She was also given a 14-day cooling off period and she has not provided a sufficiently credible explanation for why she did not cancel the membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mrs B made the decision to purchase Fractional Club membership because her ability to exercise that choice was significantly impaired by pressure from the Supplier.

Finally, although the PR has not explicitly said that any misrepresentations could have given rise to an unfair relationship, that is something I have to consider given that any representations made at the Time of Sale could be attributed to the Lender under s.56 CCA. Further, those representations are things I ought to consider even if the underlying freestanding misrepresentation claim was made too late (see Scotland & Reast v. British Credit Trust Limited [2014] EWCA Civ 790).

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mrs B was:

- 1. Told that she had purchased an investment that would “considerably appreciate in value”.*
- 2. Promised a considerable return on her investment because she was told that she would own a share in a property that would considerably increase in value.*
- 3. Told that she could sell their Fractional Club membership to the Supplier or easily to third parties at a profit.*
- 4. Made to believe that she would have access to “the holiday apartment” at any time all year round.*

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 any accompanying 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 one or both of those reasons, I don’t think it’s probable. Mrs B has given little to none of the colour or context necessary to demonstrating that the Supplier made false statements 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 these reasons, I don’t think it was.

So, while I recognise that Mrs B - and the PR - have concerns about the way in which Fractional Club membership was sold by the Supplier, I’m not persuaded that there was a factual and material misrepresentation by the Supplier that gave rise to an unfairness under Section 140A.

Overall, therefore, I don’t think that Mrs B’s credit relationship with the Lender was rendered unfair to her 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 Mrs B. And that’s the suggestion that Fractional Club membership was marketed and sold to Mrs B 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 Mrs B’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 Mrs B was 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 Mrs B the prospect of a financial return – whether or not, like all investments, that was more than what she 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 Mrs B 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 her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her 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 Mrs B, 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 Mrs B as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Would the credit relationship between the Lender and Mrs B have been rendered unfair to her 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 Time of Sale, I now need to consider what impact that breach

had on the fairness of the credit relationship between Mrs B 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 Mrs B and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

But it was only after the Investigator issued their view, and after the judgment in R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS') was handed down, that Mrs B provided a witness statement dated 17 March 2024, which set out her recollections. It was at this point Mrs B indicated that the Supplier led her to believe that Fractional Club membership offered her the prospect of a financial gain. And as experience tells me that, the more time that passes between a complaint and the event complained about, the more risk there is of recollections being vague, inaccurate and/or influenced by discussion with others, I find it difficult to understand why the Financial Ombudsman Service was only given such evidence when it was.

Indeed, as there isn't any other evidence on file to corroborate Mrs B's recent evidence about her motivations at the Time of Sale, there seems to me to be a very real risk that Mrs B's recollections were coloured by the judgment in Shawbrook & BPF v FOS. And with that being the case, I'm not persuaded that I can give her written recollections the weight necessary to finding that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

And, 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 Mrs B decided to go ahead with the purchase. That doesn't mean she wasn'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 Mrs B doesn't persuade me that the purchase was motivated by her 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 Mrs B ultimately made.

I say that taking into account not only Mrs B's witness statement, but also the evidence the Lender has provided. As I've said, Mrs B upgraded an existing membership to benefit from Fractional Club membership. And it seems to me that if she was told she would be paid a share in the net sale proceeds of the Allocated Property after her membership term ended, this was a description of how the membership was intended to work in practice. I can see that at the Time of Sale, Mrs B was offered inducements, such as £1000, a discount voucher and a cash discount. And I can also see that the Fractional Membership was used to complete eight worldwide holidays between 2012 and December 2014.

And so it appears to me that the ability to benefit from the membership to take holidays was of real importance to Mrs B. But there is little mention of these holiday rights in her witness statement. All of this affects the weight I think I can put on it. Overall, whilst Mrs B does make some reference to being told there she'd receive a profit, I am not persuaded that anything she was told about this had a material impact on her decision to take out membership.

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 Mrs B'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 she would have pressed ahead with her 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 Mrs B and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

Section 140A: Conclusion

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Mrs B and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.'

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 Mrs B's Section 75 claim and I was not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement that was unfair to her 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 Mrs B.

The Lender responded to the PD and accepted it.

The PR also responded – they did not accept the PD and provided some further comments and evidence they wish to be considered.

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 Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

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.

Following the responses from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the PD in the main relate to the issue of whether the credit relationship between Mrs B and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mrs B as an investment at the Time of Sale.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But they didn't make any further substantive comments in relation to those in their response to my PD. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on the PR's points raised in response.

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

The PR explained in their response to my PD that they hadn't shared the Investigator's view on this complaint with Mrs B saying, "*this was done to ensure their recollections remained entirely their own and were not influenced by external documents*". They referred too to research which they say shows that high value items are more likely to be remembered. They disagreed then with the conclusion that memories can fade and change over time.

The PR also Mrs B hadn't heard about the judgment handed down in *Shawbrook and BPF v FOS*¹. They added that Mrs B didn't have a legal background, and even if she had come across any information about the judgment in the press, she wouldn't have been able to understand the complex legal issues involved. Therefore, the PR said this means Mrs B's recollections have not been influenced by either the Investigator's view or the aforementioned judgment.

Part of my assessment of the testimony was to consider *when* it was written, and whether it may have been affected by external factors such as the widespread publication of the outcome of *Shawbrook and BPF v FOS*.

I have thought about what the PR has said, but on balance, I don't find it a credible explanation of the contents of Mrs B's evidence. Here, the PR responded to our Investigator's view to say that Mrs B alleged that Fractional Club membership had been sold to her as an investment and it provided evidence from Mrs B to that effect. I fail to understand how Mrs B disagreed with the view on the basis that the timeshare was sold as an investment if she didn't know our Investigator's conclusions. It follows, I think it more likely than not that Mrs B did know about our Investigator's view before her evidence was provided.

So, I maintain that there is a risk that Mrs B's testimony was coloured by the Investigator's view and/or the outcome in *Shawbrook & BPF v FOS*. And, on balance, the way in which the evidence has been provided makes me conclude that I can place little weight on it. So, ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mrs B's purchasing decision.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my provisional decision, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mrs B's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mrs B and the Lender was unfair to her for this reason.

S140A conclusion

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Mrs B and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

Conclusion

¹ *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('*Shawbrook & BPF v FOS*').

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 Mrs B's Section 75 claim and I am not persuaded that the Lender was party to a credit relationship with Mrs B under the Credit Agreement that was unfair to her 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 Mrs B.

My final decision

For the reasons I've given above and in my provisional 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 Mrs B to accept or reject my decision before 5 March 2026.

Lisa Barham
Ombudsman