DRN-6126554

The complaint

Mr and Mrs A say their creditor-debtor relationships with Shawbrook Bank Limited, - (the Lender) were unfair to them under section 140A of the Consumer Credit Act 1974 ('CCA'). And they think the provision of the lending to them was irresponsibly provided. They also say the Lender unfairly declined their claim under section 75 of the CCA.

What happened

In January and May 2014, Mr and Mrs A purchased timeshare memberships from a timeshare provider (the 'Supplier'). The memberships were asset backed – which meant they included a share of the net sale proceeds of a property named on the purchase agreement (the 'Allocated Property') after the membership term ended. The loan taken out in January 2014 to finance that purchase was £16,298 and the loan taken out in May 2014 to finance that purchase was £24,801. The first loan was consolidated into that loan when it started in June 2014, and Mr and Mrs A paid £7,939 for the additional points they purchased.

In August 2023, Mr and Mrs A used a professional representative ('PR') to complain about the purchases and the related loans. In summary, the complaint submissions said:

• The Supplier told Mr and Mrs A they could own a unit at a resort, and that it was purported that this would be an investment for their family's future, which they could sell in the future for a profit, which was a gross misrepresentation.
• The cost of the maintenance fees wasn't explained to Mr and Mrs A.
• They were unable to use the Timeshare due to their son's ill health and had used it once in 2015.

Mr and Mrs A say this led to unfair relationships for the purposes of section 140A of the CCA, specifically relying on R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd [2023] EWHC 1069 (Admin) ('Shawbrook v Financial Ombudsman Service').

Shawbrook responded to Mr and Mrs A's complaint in February 2024. It went on to say that in respect of the first loan, Mr and Mrs A had waited too long to make the complaint, as they had repaid the loan more than six years ago, and that it was time barred under the Limitation Act. It went on to explain why it wasn't upholding the complaint in respect of the May 2014 sale.

Mr and Mrs A's PR referred the complaint to our service. One of our investigators considered the complaint. They explained why they didn't think this service could consider their concerns in relation to the Timeshare purchase and loan taken out in January 2014, as it hadn't been made in time. But they did think the purchase made in May 2014, and Mr and Mrs A's concerns about the associated loan taken out with it, could be considered. And they went on to explain why they weren't upholding that aspect of the complaint.

Mr and Mrs A's PR asked for a final decision from an ombudsman. I issued a decision on 8 January 2026 explaining why I didn't think Mr and Mrs A's concerns about the purchase of their first Fractional Club membership in January 2014, had been made in time. This decision will deal with Mr and Mrs A's complaint about the purchase and loan taken out in May 2014, and their allegations of misrepresentation in respect of the purchase and loan taken out in January 2014.

In response to my provisional decision the Lender said it had no further comments to make. No response was received from the PR.

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.

And having done so and having not received any further submissions to consider from either party in response to my provisional decision, by the deadline I set; I remain of the opinion that this complaint should not be upheld.

Before I explain why, I want to make it clear that my role as an ombudsman isn't to address every single point that's been made to date – it's to decide what's fair and reasonable in the circumstances of this complaint. So, if I haven't commented on, or referred to, something that either party has said, it doesn't mean I haven't considered it.

Section 75 of the CCA

In addition to allegations that the sales and associated lending were unfair pursuant to section 140A of the CCA, the PR has said that misrepresentations were made by the Supplier during the sales processes. It seems to me that those allegations need also to be considered through the lens of section 75 of the CCA.

As both sides may already know, a claim against the Lender under Section 75 essentially mirrors the claim Mr and Mrs A could have made against the Supplier. Certain conditions must be met if this protection is engaged – which are set out in the CCA. The Lender does not dispute that the relevant conditions are met in this complaint, but I don't think Mr and Mrs A would have been able to make a successful claim for misrepresentation under Section 75. I'll explain why.

The sales complained about took place in January and May 2014. The claim letter from the PR is dated August 2023. At the time the Lender received notification of the PR's claim, in August 2023, I think it would have been time-barred under the Limitation Act 1980 ("LA"). The LA sets out limitation periods (time limits) for bringing various types of legal claim. If a claim is brought too late, the respondent is likely to have a complete defence to the claim on that basis.

For claims relating to misrepresentation, the limit normally runs six years from the date a person suffers damage as a result of the misrepresentation – such as entering into a contract and incurring liabilities they wouldn't have otherwise. This means the time to bring a claim for misrepresentation would have been six years from the Times of Sale, so the limitation period for such claims would have expired in January and May 2020, which was before the Lender was notified of the claim. So, I do not think the Lender would be wrong to decline it.

The PR also referred to Section 32 of the LA as postponing the limitation period in the case of fraud, concealment or mistake. I disagree. Section 32(1) of the LA has the potential to postpone the relevant limitation period in cases of fraud, concealment, or mistake. I have thought about that here. But in this case the PR has simply referenced section 32(1), but it hasn't explained what acts were carried out, that would make it a relevant consideration that might extend time. So, I find it very difficult to see taking into account the brief submissions provided by the PR in this case, how section 32(1) could extend the time limit for Mr and Mrs A.

Mr and Mrs A's PR also says section 14A of the LA gives them more time to make their claim. I disagree. Section 14A provides claimants with a 'special time limit for negligence actions where the facts relevant to [the] cause of action are not known at the date of accrual'. However, in *Thomas v Taylor Wimpey Developments* [2019] EWHC 1134 (TCC), the court confirmed that claims under section 2(1) of the Misrepresentation Act 1967 are not claims of negligence and section 14A of the LA doesn't apply to them. And, based on the PR's brief submissions, I don't see how section 14A could otherwise extend the time limit for Mr and Mrs A.

Mr and Mrs A refer to the limited availability / choice and exclusivity of holidays. So, my understanding is that he believed the Timeshare was misrepresented because they couldn't holiday in the way they say they were led to believe by the Supplier. But that would have

been clear to them soon after the Time of Sale. So, even if it could be said that section 32(1) is likely to have postponed the limitation period until they first discovered that the availability of holidays was not what they thought it would be, (and I make no such finding that it was), I'm not persuaded that would make a difference here.

However, the judgment in Scotland and Reast explains that, even if a limitation period has expired for a standalone misrepresentation claim, relevant misrepresentations that could be attributed to the Lender can be considered as part of the assessment of the unfairness of the credit relationship. So, I have gone on to consider those matters later in this decision.
As noted above Mr and Mrs A have said he could not holiday where and when he 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 also potentially breaching the Purchase Agreement. 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 A, states that the availability of holidays was/is subject to demand. It also looks like he made use of his fractional points to holiday on a number of occasions. I accept that he 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 A 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?

Section 140A says a court may make an order if it thinks the relationship between a creditor and a debtor is unfair to the debtor. It's deliberately framed in wide terms, and a finding of unfairness can flow from something done on the creditor's behalf in connection with a 'related agreement'. Here, the purchase agreement is a 'related agreement'. And, by virtue of section 56 of the CCA, the Lender is legally answerable for the Supplier's actions.

Having considered the entirety of the relationship, I don't think it was unfair for the purposes of section 140A. In reaching this conclusion, I've considered:

(1) The standard of the Supplier's commercial conduct, which includes its sales and marketing practices at the time of sale, and any relevant training material.
(2) The information provided by the Supplier at the time of sale, including the contracts and any 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) All the evidence provided by both parties on what was supposedly said and/or done at the time of sale.
(5) The inherent probabilities of what's likely to have happened given the circumstances of the sale; and when relevant
(6) Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationship between Mr and Mrs A and the Lender given his circumstances at the Time of Sale.

The Supplier's sales and marketing practices at the time of sale

There are several reasons why the PR says Mr and Mrs A's creditor-debtor relationship with the Lender was unfair to them.

It says that the right affordability checks weren't carried out. 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 A 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.

Mrs A has said in her statement from July 2015, that they were subject to pressure selling. I appreciate that Mr and Mrs A may have felt weary after a sales process that went on for a long time. But it's not clear to me from what Mr and Mrs A has said, as to what was done by the Supplier during the sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply didn't want to.

They were also given a 14-day cooling off period. I do understand and empathise that their son was ill during the cooling off period. But it's not clear to me from the information provided as to why they did not cancel their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs A made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

I'm not persuaded, therefore, that Mr and Mrs A'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 they say their 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 the prohibition against selling timeshares in that way.

Was Fractional Club membership marketed and sold at the Time of Sale as an investment in breach of Regulation 14(3) of the Timeshare Regulations?

The Lender does not dispute, and I am satisfied, that Mr and Mrs A'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 membership of the Fractional Club 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. So, that is what I have considered next.

The term "investment" is not defined in the Timeshare Regulations. In *Shawbrook & BPF v FOS*, the parties agreed that, 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*" at [56]. I will use the same definition.

Mr and Mrs A's share in the Allocated Property clearly, in my view, constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that

was more than what they first put into it. But 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 A 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 A, 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. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr and Mrs A as an investment. So, it's *possible* that Fractional Club membership wasn't marketed or sold to them as an investment in breach of Regulation 14(3).

On the other hand, I acknowledge that the Supplier's training material 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 A 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 is 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 Mr and Mrs A have been rendered unfair to them had there been a breach of Regulation 14(3) of the Timeshare Regulations?

As I think it's possible the Supplier breached Regulation 14(3) at the time of sale, I now need to decide what impact it might have had on the fairness of the relationship between Mr and Mrs A and the Lender. I say this because in Plevin v Paragon Personal Finance Ltd [2014] UKSC 61 ('Plevin'), the Supreme Court said:

'Section 140A […] does not impose any obligation and is not concerned with the question whether the creditor or anyone else is in breach of a duty. It is concerned with the question whether the creditor's relationship with the debtor was unfair.'

What this means is that a breach of Regulation 14(3) doesn't automatically mean the credit relationship is unfair for the purposes of section 140A. Such breaches and their consequences (if there are any) must be considered in the round rather than in a narrow or technical way. For me to conclude that a breach of Regulation 14(3) led to an unfair

relationship, I need to see sufficient evidence to conclude, on the balance of probabilities, that the prospect of a financial gain was an important and motivating factor for Mr and Mrs A when they decided to purchase Fractional Club membership.

In July 2015, Mrs A provided her recollections about the sale in the form of a statement of truth, which she signed. The guidance at the top of the statement asked her to outline the circumstances of the purchase, including amongst a number of topics - what she was promised. In that statement Mrs A sets out what she was told in respect of both of the sales in 2014. She talks about being encouraged to put their children's name on the ownership certificate, not knowing it would make them liable for future years of charges. And she mentions the limited choice / availability of holidays. But she makes no mention of the Fractional Club membership being sold to her as an investment, or that she and Mr A were led to believe it might provide them with a profit.

And taking into account that the guidance provided on the statement pro forma that she completed asked her to specifically set out what she was promised, and that the statement was made approximately a year after they purchased the additional week in May 2014; if she had been told that Fractional Club membership was an investment that would provide her and Mr A with a profit, I would have expected her to say so in her statement. But she didn't, which leads me to doubt that she and Mr A were told that.

However, in addition to the statement of truth The PR has provided a "Timeline of Events – Evidence of Misrepresentation questionnaire" that has been completed by Mr and Mrs A. This asks a number of questions about the promises that were made to them during the sales. It's signed by both Mr and Mrs A and dated 15 April 2024. So, it's apparent it was prepared after the High Court had handed down its judgment in Shawbrook v Financial Ombudsman Service, and it had been approximately 10 years since the events complained about.

In my experience, the more time that passes between a complaint and the events complained about, the greater the risk that the consumers' recollections will be vague and inaccurate and potentially influenced by discussions with others, and even the complaint process itself. And given the disparity between what is said in the statement of truth which makes no mention of investment and the questionnaire which says they "were told would be good investment," I think that is what is likely to have happened here.

Indeed, as there's no evidence on file to corroborate the summary of Mr and Mrs A's recent recollections, I think there's a real risk that Mr and Mrs A's recollections were influenced by the PR's submissions and/or the judgment in Shawbrook v Financial Ombudsman Service. This means that I can't give them the weight necessary to conclude that the credit relationship in question was unfair because of a breach of Regulation 14(3).

The information provided by the Supplier at the time of sale

The PR seems to be suggesting that Mr and Mrs A weren't given sufficient information at the Time of Sale by the Supplier to enable them to make an informed decision about whether or not to enter into the contract. And it also seems to be suggesting that key contractual terms were unfair contract terms as were the terms governing the ongoing costs of membership.

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 A 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 A 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 an unfair credit relationship as a result.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mr and Mrs A in practice, nor that any such terms led him to behave in a certain way to his 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, even if they could be said to be unfair contract terms, which I make no formal finding on.

Overall Conclusion

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 A's Section 75 claims. I am not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement and related Purchase Agreement that was unfair to him 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 him.

My final decision

For the reasons I've set out above, my decision is not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs A to accept or reject my decision before 3 March 2026.

Simon Dibble
Ombudsman