DRN-6131278

The complaint

Miss D'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

Miss D and her partner were members of a timeshare provider (the 'Supplier') – having purchased a Trial Membership from it. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 8 December 2016 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,180 fractional points at a cost of £14,858 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Miss D and her partner 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.

Miss D paid for their Fractional Club membership by taking finance of £17,615 in her sole name from the Lender (the 'Credit Agreement'). £2,757 was used to pay off existing borrowing and the balance was used to pay for the Fractional Club membership.

Miss D wrote to the Lender on 7 April 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 Miss D's concerns as a complaint and issued its final response letter on 12 May 2025, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service, by Miss D using the services of a professional representative (PR). It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Miss D disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. I issued a provisional decision (PD) explaining why I didn't think the complaint should be upheld. Neither party responded to my PD.

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 that and not having received any further submissions in response to my PD, I remain of the opinion that this complaint should not be upheld. I'll set out my reasoning again below.

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.

Miss D has framed her complaint as one pursuant to Section140A of the CCA. However, she has raised some concerns that are best considered in the context of Section 75 of the CCA. It's those concerns that I will consider first.

Section 75 of the CCA: the Supplier's Breach of Contract

The CCA introduced a regime of connected lender liability under section 75 that affords consumers ("debtors"), a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers"), in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

In her letter in support of her complaint, Miss D suggested that the Supplier breached the Purchase Agreement because it went into liquidation in 2019. And if certain parts of the Supplier's business were put into administration, I can understand why Miss D is alleging that there was a breach of the Purchase Agreement as a result. However, neither Miss D nor the PR have said, suggested or provided evidence to demonstrate that Miss D is no longer:

1. a member of the Fractional Club;
2. able to use the Fractional Club membership to holiday in the same way she could initially; and
3. entitled to a share in the net sales proceeds of the Allocated Property when her Fractional Club membership ends.

So, from the evidence I have seen, I do not think the Lender is liable to pay Miss D any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

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

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Miss D 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 Miss D and the Lender.

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

Miss D's complaint about the Lender being party to an unfair credit relationship was and is made for several reasons.

Miss D and the PR say, for instance that:

1. She couldn't afford the loan, was surprised that the loan was approved; and
2. She and her partner were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.

However, neither of these strike me as reasons why this complaint should succeed. I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Miss D 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 Miss D. She has said that she wasn't working at the time of the purchase. But the loan application form I've seen shows that she declared she was working at the time. I've considered what Miss D has said about this, but I've not been provided with any evidence to substantiate what she has said about her employment at that time.

I acknowledge that Miss D may have felt weary after a sales process that went on for a long time. But she says little about what was said and/or done by the Supplier during their sales presentation that made her, and her partner feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. She was also given a 14-day cooling off period and Miss D hasn't provided a 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 Miss D made the decision to purchase Fractional Club membership because her ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Miss D'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 now says the credit relationship with the Lender was unfair to her. And that's the suggestion that Fractional Club membership was marketed and sold to her as an investment in breach of the prohibition against selling timeshares in that way.

The Supplier's alleged breach of Regulation 14(3) of the Timeshare Regulations

A share in the Allocated Property clearly constituted an investment as it offered Miss D 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 Miss D 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.

And 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 Miss D, the financial value of her share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

But on the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Miss D 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 Miss D rendered unfair?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach (if there was one) had on the fairness of the credit relationship between Miss D 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 Miss D 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 on my reading of the evidence before me, I'm not persuaded the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Miss D decided to go ahead with her purchase.

The main piece of evidence I have of Miss D's state of mind and motivations around the Time of Sale is her letter in support of the complaint. I have a number of concerns about what she has said. Firstly, Miss D says that she booked a week away in December 2018 and that on arrival she had no idea that the break also included a presentation meeting, which she didn't want to attend, but felt obliged to do so. But the Fractional Club membership she complains about was purchased in December 2016, and the notes provided by the Supplier from November 2016 indicate that she was aware that a meeting needed to be arranged. Miss D has said that she didn't use her Fractional Club membership. But the reservation history provided by the Supplier shows that she made two bookings in 2017 and one in 2018.

In relation to being told that the Fractional Club membership was an investment from which she would make a profit, I'm hindered in assessing the strength of those submissions, by not having much detail as to what Miss D was told about this, and the context in which any information was provided to her during the sales process.

Miss D said in her response to the investigator's view, that she had recently learned of a High Court ruling in March 2023 involving the Lender. I can't discount therefore the possibility that notwithstanding the letter is dated from April 2025, which was after the judicial review (JR) case of Shawbrook v Financial Ombudsman Service, a case which highlighted the potential significance of breaches of Regulation 14(3), that its content was possibly influenced by the outcome of the JR. And as a result, I don't think I can apply much weight to the contents of Miss D's letter, given what I've said above.

Nevertheless, I can't rule out the possibility that Miss D may have been 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 Miss D doesn't persuade me that her 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 she 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 Miss D'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 Miss D and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

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 Miss D Section 75 claim. I am not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement and related Purchase 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 her.

My final decision

For the reasons set out above, my decision is not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 5 March 2026.

Simon Dibble
Ombudsman