

The complaint

Mr W's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying claims under Section 75 of the CCA.

What happened

Mr W was the member of a timeshare provider (the 'Supplier') – having purchased several products from it over time. By the end of 2009, Mr W owned 15,000 European Collection points, which he could use to holiday with the Supplier.

The product at the centre of this complaint is Mr W's membership of a timeshare that I'll call the 'Fractional Club' – specifically his purchase on 1 August 2013 (the 'Time of Sale'). Mr W entered into an agreement with the Supplier to buy 11,000 fractional points at a cost of £7,480 (the 'Purchase Agreement') after trading in 11,000 European Collection points, which were given a value in the transaction of £11,000.

Fractional Club membership was asset backed – which meant it gave Mr W 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 his membership term ends.

Mr W paid for their Fractional Club membership by taking finance of £7,480 from the Lender (the 'Credit Agreement').

Mr W – using a professional representative (the 'PR') – wrote to the Lender on 15 July 2022 (the 'Letter of Complaint') to raise several different concerns. Since then, the PR has raised some further matters it says are relevant to this outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender responded to Mr W's concerns on 16 February 2023, rejecting them.

The PR then referred a complaint about this to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mr W 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 explaining that I was not planning to uphold the complaint..

The Lender accepted my provisional decision or my provisional findings on commission.

The PR disagreed with my provisional findings and provided some comments and documents it wanted me to consider when making my final decision.

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. Having done so, I've reached the same decision as that which I outlined in my provisional findings – and for broadly the same reasons. A copy of my provisional findings is below. As such, I do not uphold this complaint.

START OF COPY OF PROVISIONAL FINDINGS

Complaint about the Lender's rejection of Mr W's Section 75 misrepresentation claim

I don't think it would be fair or reasonable to uphold this complaint. Generally, 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. This is because it wouldn't be fair to expect creditors to investigate 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 W's Section 75 claim was time-barred under the Limitation Act before he put it to the Lender.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim the consumer 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 Limitation Act).

But a claim under Section 75 is also 'an action to recover any sum by virtue of any enactment' under Section 9 of the Limitation Act. 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 Time of Sale. I say this because Mr W entered the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which he says he relied on. And as the loan from the Lender was used to help finance the purchase, it was when he entered into the Credit Agreement that he suffered a loss.

Mr W first notified the Lender of his Section 75 claim on 21 July 2022. And as more than six years had passed between the Time of Sale and when he first put his claim to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mr W's concerns about the Supplier's alleged misrepresentations.

Complaint about the Lender's rejection of Mr W's Section 75 breach of contract claim

If I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable. The PR says Mr W could not holiday where and when he wanted to. 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 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 W states that the availability of holidays was/is subject to demand. I accept that Mr W may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

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

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

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

They include allegations that:

1. Mr W were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.
2. The right checks weren't carried out before the Lender lent to Mr W.

3. Mr W was not given a choice of lender by the Supplier.

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

I acknowledge that Mr W may have felt weary after a sales process that went on for a long time. But he says little about what was said and/or done by the Supplier during his sales presentation that made him feel as if he had no choice but to purchase Fractional Club membership when he simply did not want to. He was also given a 14-day cooling off period and he has not provided a credible explanation for why he did not cancel his membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr W made the decision to purchase Fractional Club membership because his 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 W was actually unaffordable before also concluding that he lost out as a result and then consider whether the credit relationship with the Lender was unfair to him for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr W.

Similarly, the PR has not explained how, if it were true, Mr W not being offered a different lender to pay for Fractional Club membership caused him any unfairness or financial loss. Mr W was aware of the interest rate as set out on the face of the Credit Agreement, as well as the term of the loan and the monthly repayments, so he understood what it was he was 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 W's credit relationship with the Lender was rendered unfair to him under Section 140A for any of the reasons above. But there is another reason why the PR now says the credit relationship with the Lender was unfair to Mr W. And that's the suggestion that Fractional Club membership was marketed and sold to him 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 Mr W'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. 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 could constitute an investment as it offered Mr W the prospect of a financial return – whether or not, like all investments, that was more than what he 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.¹

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 W 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, 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 W, 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 it.

On the other hand, I think the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr W 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 determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Was the credit relationship between the Lender and Mr W rendered unfair?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr W and the Lender under the Credit Agreement and related Purchase Agreement. This is because 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.

¹ The PR has argued that Fractional Club membership amounted to an Unregulated Collective Investment Scheme, however this was considered and rejected in 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).

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr W and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mr W decided to go ahead with their purchase. I say this because Mr W's own statement about what happened says the following:

"... we were informed that the points we held were being phased out and replaced with fractions. He then went into great detail about how fractions were an investment as we would own fractions of property within the resorts they owned. Using the fact that property increases in value over time we could not lose, once the property was sold, we would get our money back.

Also, they only had a finite number of properties, we were offered properties in Santa Barbara resort, we needed to get in quickly and change our points into fractions, because in the near future we would not be able to use them, but would still be charged maintenance fees. This was a big scare tactic, we know now but, in fear we signed up to swap our points for fractions."

So, it seems to me that although Mr W recalls the Supplier describing Fractional Club membership as an investment at the Time of Sale, Mr W's own understanding of that was that it would lead to him only getting his money back – rather than making a profit. Based on Mr W's own statement, the main driver of his purchase appears to have been that he feared being unable to use his existing European Collection points if he did not change them to fractional points, rather than because he saw it as an investment.

That doesn't mean Mr W 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 and that he was making a point-for-point upgrade, which would not give him additional holiday rights. But as Mr W himself doesn't say that his purchase was motivated by the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was material to the decision Mr W ultimately made at the Time of Sale.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr W'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 Mr W would have pressed ahead with the purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr W and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

The provision of information by the Supplier at the Time of Sale

The PR says that Mr W were not given sufficient information at the Time of Sale by the Supplier about membership, including about the ongoing costs of Fractional Club membership and the fact that Mr W's heirs could inherit these costs.

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 W sufficient information, in good time, on the various charges they could have been subject to as Fractional Club members 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 W nor the PR have persuaded me that Mr W would not have pressed ahead with the purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its facts and circumstances.

As for the PR's argument that Mr W'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.

END OF COPY OF PROVISIONAL FINDINGS

The PR's response to my provisional findings about an unfair relationship

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 provisional decision only relate to the issue of whether the credit relationship between Mr W and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr W as an investment at the Time of Sale and whether this was material to his decision to purchase.

As outlined in my provisional decision, the PR originally raised various other points of complaint, all of which I addressed at that time. But they didn't make any further comments in relation to those in their response to my provisional decision. 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 provisional decision. So, I'll focus here on the PR's points raised in response.

The PR has provided further comments and evidence which in my view relate to whether Fractional Club membership was marketed or sold as an investment in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. However, as I explained in my provisional decision, while the Supplier's sales processes left open the possibility that the sales representative may have positioned Fractional Club membership as an investment, it isn't necessary to make a finding on this as it is not determinative of the outcome of the complaint. I explained that Regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

The PR's comments and evidence in this respect do not persuade me that I should uphold Mr W's complaint, because they do not make me think it's any more likely that the Supplier's breach of Regulation 14(3) led Mr W to enter into the Purchase Agreement and the Credit Agreement.

The PR has provided its further thoughts as to Mr W's likely motivations for purchasing Fractional Club membership. This included referring to new evidence – a typed form it describes as an *“introducers enquiry form”*. This is undated, unsigned, doesn't say who (individually or what company) created it, but has Mr W's name and *“Spain 2013”* handwritten at the top of the form. This evidence has been provided very late in the complaint process (in response to my provisional decision) and goes beyond what Mr W said in his statement (that he would get his money back), by saying that he could make money (that is, a profit) from Fractional Club membership. It also includes leading questions which risked introducing the idea of Fractional Club membership being an investment. However, it does mirror what Mr W said in his statement about concerns about his existing European Collection points – *“we were told this was the way forward for the club and not to be left behind”, “the old points would not be able to be used as effectively”, “the points would become obsolete”, “this was my last chance to change”, “pressure was put on me to purchase there and then as it could well be the last chance”, “Were you told that your current points... would be worthless? [answer] Points would be worthless”, “we were told that this was the way forward for the club and not to be left behind”*.

In my provisional decision, I explained the reasons why I didn't think Mr W's purchase was motivated by the prospect of a financial gain (i.e., a profit). And although I have carefully considered the PR's arguments and additional evidence in response to this, I'm not persuaded the conclusions I reached on this point were unfair or unreasonable.

On my reading of the evidence, Mr W purchased Fractional Club membership because he was worried that if he did not upgrade, his existing European Collection membership and points would no longer be of use. And I still think it is likely that, regardless of whether Fractional Club membership was sold or marketed as an investment, and whether as a result Mr W hoped or expected to profit from it (which I acknowledge is a possibility), he would still have made the purchase anyway. As such, it does not appear to me that Mr W has suffered a loss, since he still would've entered the Purchase Agreement and Credit Agreement anyway.

So, ultimately, for the above reasons, along with those I already explained in my provisional decision, I remain unpersuaded that any breach of Regulation 14(3) should lead me to uphold this complaint.

Conclusion

In conclusion, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with Mr W under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate Mr W.

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 W to accept or reject my decision before 10 March 2026.

Phillip Lai-Fang
Ombudsman