DRN-6155616

The complaint

Mr and Mrs E'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 and Mrs E purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 19 July 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,820 fractional points at a cost of £18,151 (the 'Purchase Agreement') after trading in their trial membership.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs E 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.

Mr and Mrs E paid for their Fractional Club membership by taking finance of £21,228 from the Lender (the 'Credit Agreement'). The additional amount was used to consolidate the loan they used to pay for trial membership.

Mr and Mrs E – using a professional representative (the 'PR') – wrote to the Lender on 11 July 2022(the 'Letter of Complaint') to raise several different concerns. 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 dealt with Mr and Mrs E's concerns in its letter dated 14 September 2022, rejecting it on every ground.

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.

Mr and Mrs E 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 said it had nothing to add in response to my provisional decision.

The PR disagreed with my provisional findings and provided some comments 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 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

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

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

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

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

1. Told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true.

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

3. Told by the Supplier that Fractional Club membership was an "investment" when that was not true.

4. Told by the Supplier that if their circumstances changed and they wanted to "get out" of the timeshare that they could, implying that they Credit Agreement could be cancelled as well.

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

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

As for point 3, it does not strike me as a misrepresentation even if such a representation had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue – nor was it untrue to tell prospective members that they would receive some money when the allocated property is sold. After all, purchasing Fractional Club membership clearly included acquiring the rights to a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give prospective members that interest, it did not change the fact that they acquired such an interest.

On point 4, I am not persuaded that the Supplier would've made a representation that getting out of the timeshare would end Mr and Mrs E's liability to repay the loan (at least not beyond the 14-day cooling off period). That was not the case, so I think it is highly unlikely the Supplier would have said this or even implied it. It was true that Mr and Mrs E could surrender their timeshare, which is what they say they were told. So I am not persuaded that there was a misrepresentation.

The PR has raised other matters as potential misrepresentations, but it seems to me that they are not allegations of the Supplier saying something that was untrue. Rather, it is that Mr and Mrs E weren't told things about the way the membership worked – for example, that the obligation to pay management fees could be passed on to their children. It seems to me that these are allegations that Mr and Mrs E weren't given all the information they needed at the Time of Sale, and I will deal with this further below.

So, while I recognise that Mr and Mrs E - and the PR - have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

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

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mr and Mrs E say that they could not holiday where and when they wanted to. That was framed, in the Letter of Complaint, as an alleged misrepresentation. However, on my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

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

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 E states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday. So, while I accept that they may not have been able to take certain holidays, I have not seen enough to persuade me that the Supplier 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 and Mrs E 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 and Mrs E 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 and Mrs E and the Lender.

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

Mr and Mrs E's complaint about the Lender being party to an unfair credit relationship was and is made for several reasons[3].

They include allegations that:

1. Mr and Mrs E 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 and Mrs E.

3. The loan interest was excessive.

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

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

I acknowledge that Mr and Mrs E may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. Mr and Mrs E were also given a 14-day cooling off period and they have not provided a credible explanation for 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 E 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 satisfied that proportional checks were carried out by the Lender before the loan was offered to Mr and Mrs E. This included considering their application data (including their incomes) and the information held by a credit reference agency – including their outstanding debts, associated repayments and repayment history, which showed no history of missed payments or arrears. Taking this into account alongside the bank statements Mr and Mrs E provided, I have not seen anything that persuades me the lending was irresponsible or unaffordable at the Time of Sale (the Credit Agreement added £131 per month to Mr and Mrs E's outgoings after deducting the monthly repayments for the trial loan which they would no longer have to make), nor that the later financial difficulties Mr and Mrs E experienced could have been foreseen by the Lender at that time. Those difficulties appear to have come about due to a change in circumstances.

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

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[3] The PR also raised concerns about Fractional Club membership being an Unregulated Collective Investment Scheme (which it now accepts it was not) and undisclosed commission (on which it has accepted our approach and that in this case the commission arrangements between the Lender and Supplier would not result in the complaint being upheld. In this case the commission was 5% of the amount borrowed.

Overall, therefore, I don't think that Mr and Mrs E'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 why the PR now says the 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.

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

The Lender does not dispute, and I am satisfied, that Mr and Mrs E'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 and Mr and Mrs E say that the Supplier did exactly that at the Time of Sale – saying, in summary, that they were 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 net sale proceeds of the Allocated Property could constitute an investment as it offered Mr and Mrs E the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that 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 <u>as an investment</u>. 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*.[4]

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 E 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.

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[4] 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).

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, 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 E, 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 think 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 Mr and Mrs E as an investment in breach of Regulation 14(3).

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

Was the credit relationship between the Lender and Mr and Mrs E 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 and Mrs E 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 Mr and Mrs E and the Lender that was unfair to them and warranted relief as a result, it is important for me to consider whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement.

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 and Mrs E decided to go ahead with their purchase. I say this for the following reaons.

Four pieces of evidence have been provided to show what Mr and Mrs E remembered from the Time of Sale[5]:

- A webform submitted to a timeshare advice company on 11 March 2022.
- A questionnaire completed by the timeshare advice company on 14 March 2022.
- A call note completed by the PR on 21 March 2022.
- An unsigned and undated statement written on 21 March 2022.

Mr and Mrs E describe Fractional Club membership as an investment in the webform submission and mention getting less profit because of having partially surrendered their membership. And the questionnaire also mentions profit.

However, in the statement (and as written in the call note) Mr and Mrs E give a more detailed explanation of what they meant and what they recall being told at the time of sale. But I do not find this plausible and persuasive enough for me to uphold this complaint.

[5] All of this evidence was first provided in 2025.

Mr and Mrs E say that *"At presentation [the Supplier] told us fractional meant we owned part holiday let at end of term we could continue to own, sell or rent it out like an investment."*

This suggests that were told they would own part of the Allocated Property at the end of their membership term, when they could choose to keep it (to use or rent out), or sell it. But that is not how Fractional Club membership worked. Mr and Mrs E would not have a choice at the end of the membership term – they could not keep their share of the Allocated Property nor rent it out to generate an income. Instead, the Allocated Property would be sold by the trustee, and Mr and Mrs E would receive their share of the net sale proceeds (which may or may not have ended up being a profit). In my opinion, it is very unlikely that Mr and Mrs E's recollection of what they were told is correct.

Added to this, their statement does not say or suggest that they hoped or expected to make a profit upon the sale of the Allocated Property, or that this was material to their decision to purchase. Nor does the call note. I would expect Mr and Mrs E to make that point in their statement if they did hope or expect to make a profit if that was part of the reason they chose to purchase.

I acknowledge that the webform and questionnaire do mention profit. But if that had been an important part of Mr and Mrs E's decision to purchase, I would have expected them to make that point consistently – and especially in their statement.

That doesn't mean Mr and Mrs E weren'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 Mr and Mrs E themselves do not persuade me that their purchase was motivated by their 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 they ultimately made.

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

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

The PR says that Mr and Mrs E were not given sufficient information at the Time of Sale by the Supplier about Fractional Club membership, including about the ongoing costs and the fact that Mr and Mrs E'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 and Mrs E sufficient information, in good time, on the various charges they could have been subject to as Fractional Club members in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied

unfairly in practice. And as neither Mr and Mrs E nor the PR have persuaded me that they would not have pressed ahead with their 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 and Mrs E'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 and Mrs E and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr and Mrs E as an investment at the Time of Sale and whether that was material to their 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 and Mrs E'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 and Mrs E to enter into the Purchase Agreement and the Credit Agreement. I note the PR refers to presentation slides which were in use by the Supplier up until the end of 2013. But the purchase in question here took place in 2018. While the presentation in use at the Time of Sale had some similarities, it was not the same. And it does not tally up sufficiently with Mr and Mrs E's recollection in their statement for me to conclude that they accurately recall what they were told (as I explained in my provisional findings).

The PR has provided its further thoughts as to Mr and Mrs E's likely motivations for purchasing Fractional Club membership. I recognise it has interpreted Mr and Mrs E's evidence differently to how I have and thinks it points to them having been motivated by the prospect of a financial gain from Fractional Club membership.

For example, the PR refers to what it calls the "key commercial logic" of the transaction, in which it questions why Mr and Mrs E would make the purchase for holidays. But at the Time of Sale, they were only trial members of the Supplier. The trial gave them a fixed number of week's holidays to use over a fixed period. They traded that trial membership in towards their purchase of 1,820 annual fractional points which they could use for a much longer period. So, I do not think it is inevitable that they purchased in the hope or expectation of making a profit at the end of their membership term and were not interested in the holiday benefits the purchase would provide.

In my provisional decision, I explained the reasons why I didn't think Mr and Mrs E'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 in response to this, I'm not persuaded the conclusions I reached on this point were unfair or unreasonable. Overall, their evidence is not sufficiently plausible and persuasive for me to conclude this complaint should be upheld.

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) was material to Mr and Mrs E's purchasing decision. And for that reason, I do not think the credit relationship between Mr and Mrs E and the Lender was unfair to Mr and Mrs E even if the Supplier had breached Regulation 14(3).

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 and Mrs E under the Credit Agreement that was unfair to them 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 and Mrs E.

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 E and Mrs E to accept or reject my decision before 16 March 2026.

Phillip Lai-Fang
Ombudsman