

## **The complaint**

Mr and Mrs U'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 U were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. 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 24 April 2017 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,240 fractional points at a cost of £8,776 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs U 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 U paid for their Fractional Club membership by taking finance of £8,776 from the Lender (the 'Credit Agreement').

Mr and Mrs U – using a professional representative (the 'PR') – wrote to the Lender on 24 May 2023 (the 'Letter of Complaint') to raise a number of 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 complaint was ultimately 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 U disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I considered the matter and issued a provisional decision (the 'PD'). In that decision, I said:

### ***'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 no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here.*

### **What I've provisionally 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.*

*Having done that, I do not currently think this complaint should be upheld.*

*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.*

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

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*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.*

*As a general rule, 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 (the 'LA') as it wouldn't be fair to expect creditors to look into 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 and Mrs U's Section 75 claim for misrepresentation was time-barred under the LA before they put it to the Lender.*

*As I mentioned above, a claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim Mr and Mrs U 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 LA).*

*But a claim, like the one in question here, under Section 75 is also 'an action to recover any sum by virtue of any enactment' under Section 9 of the LA. 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 and Mrs U entered into the purchase of their timeshare at that time based on the alleged misrepresentations of the Supplier – which they say were relied upon. And as the loan from the Lender was used to help finance the purchase, it was when they entered into the Credit Agreement that they suffered a loss.*

*Mr and Mrs U first notified the Lender of their Section 75 claim on 24 May 2023. And as more than six years had passed between the Time of Sale and when that claim was first put to the Lender, I don't think it was unfair or unreasonable of the Lender not to accept Mr and Mrs U's concerns about the Supplier's alleged misrepresentations.*

*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 U weren't told things about the way the membership worked, for example, was 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 U weren't given all the information they needed at the Time of Sale, and I will deal with this further below.*

### **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 U say that they could not holiday where and when they wanted to. 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.*

*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 U states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday on a number of occasions. I accept that they 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 and Mrs U 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 U 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. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;*
- 4. The inherent probabilities of the sale given its circumstances; and*
- 5. 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 U and the Lender.*

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

*Mr and Mrs U'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 and Mrs U 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 U.*
- 3. the loan interest was excessive.*

*However, as things currently stand, none of these strike me as reasons why this complaint should succeed.*

*I acknowledge that Mr and Mrs U 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. They 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 U made the decision to purchase Fractional Club membership because their 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 and Mrs U 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 Mr and Mrs U.*

*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 and Mrs U'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 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 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 U's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.*

*Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or*

*selling Fractional Club membership as an investment. This is what the provision said at the Time of Sale:*

*“A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract.”*

*But the PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mr and Mrs U 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 Allocated Property clearly constituted an investment as it offered Mr and Mrs U 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 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.<sup>1</sup>*

*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 U 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 U, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.*

*On the other hand, I acknowledge that the Supplier’s sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it’s equally possible that Fractional Club membership was marketed and sold to Mr and Mrs U as an investment in breach of Regulation 14(3).*

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<sup>1</sup> 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).

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 Mr and Mrs U 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 U 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 U and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them 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 and Mrs U decided to go ahead with their purchase. I say that having considered the available testimony in the form of a typed statement, which was signed by Mr and Mrs U but not dated. The statement was provided to this service in August 2023, but I can't say with certainty when it was made. The statement includes the following about the Time of Sale:

*'A year later [in] 2017 we got back there and we said to them we can't go where we wanted and when we wanted, we had booking issues and the good places were not available, not even on school holidays. Then they said you can upgrade your fractional to have a better accommodation and better options, so we did that, we purchased another fractional... thinking we will have what we want now. I am not happy with this timeshare because when we bought extra points we would have more availability and movement but that never happened.'*

While the suggestion from the PR is that Mr and Mrs U agreed to purchase Fractional Club membership as an investment, I don't consider that the evidence above indicates that they did so for financial gain or profit. Rather Mr and Mrs U indicated that they went ahead in order to secure improved holiday rights. Investment is mentioned in the statement but only in relation to a previous sale that isn't the subject of this complaint.

In May 2025 the PR provided copy handwritten notes, dated 10 January 2023, purportedly made during or following a call with Mr U. The call notes suggest Mr and Mrs U were convinced to upgrade to get better booking availability and accommodation. Reference was also made to getting money back and even making a profit after the sale of the Allocated Property.

Also in May 2025, the PR provided a copy claim form from a third-party timeshare relinquishment company (TRC) dated 9 January 2023. The handwritten notes made by the TRC's representative refer to 'get money back when sold' but also 'better/cheaper holidays'.

Taking all the evidence into account, I consider on balance that making a profit wasn't a material factor in Mr and Mrs U's decision at the Time of Sale. I think if it was, it's likely this would have been suggested in their written statement addressing why they were unhappy.

*That doesn't mean Mr and Mrs U 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 U themselves don't 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 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 and Mrs U'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 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 and Mrs U 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 and Mrs U 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 and Mrs U'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 U sufficient information, in good time, on the various charges they could have been subject to as a Fractional Club member 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 U 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 U'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.*

### **Section 140A: Conclusion**

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

### **Overall Conclusion**

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*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 U's Section 75 claims. I am not persuaded that the Lender was party to a credit relationship with them under the*

*Credit Agreement and related Purchase Agreement that was unfair to them 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 them.'*

The Lender confirmed it had nothing further to add to the PD.

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

Having received the relevant responses from both parties, I'm now finalising my 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 and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

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

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

The PR's further comments in response to the PD only relate to the issue of whether the credit relationship between Mr and Mrs U 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 U as an investment at the Time of Sale.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But it didn't make any further comments in relation to those in its response to my PD. Indeed, it hasn't said it disagrees with any of my provisional conclusions in relation to those other points. On that basis, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on the PR's points raised in response.

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

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

The PR has provided its further thoughts as to Mr and Mrs U's likely motivations for purchasing Fractional Club membership. I recognise it has interpreted Mr and Mrs U's testimony 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. But I'm not persuaded that the evidence supports the PR's position on the matter.

In my provisional decision I explained the reasons why I didn't think Mr and Mrs U's purchase was motivated by the prospect of a financial gain (i.e., a profit). I recognise that, in some of the evidence provided, suggestion is made that Mr and Mrs U believed they stood to profit from Fractional Club membership. The PR says that, when considered in the round, the evidence demonstrates they were induced into the Purchase and Credit Agreements by

the promise of an investment that would bring a profit.

Although I have carefully considered the PR's arguments in this regard, including the additional context it's attempted to provide, I'm not persuaded the conclusion I reached on this point was unfair or unreasonable. I still think it reasonable to place emphasis on Mr and Mrs U's written statement which clearly refers to a desire at the Time of Sale to secure improved holiday rights and availability.

The PR says the sale should be viewed in light of a previous timeshare sale, regarding which Mr and Mrs U do allege that the product was sold as an investment. But I think Mr and Mrs U's own testimony provides a clearer insight into their motivations at the Time of Sale.

I recognise, as the PR says, that investment and profit is referred to in some of the other evidence, such as Mr and Mrs U's initial enquiry form to a third-party timeshare relinquishment company. But that's not how they expressed what they remembered in their written statement, as it would be reasonable to expect them to do in their documented recollections of the sale. That's especially the case since Mr and Mrs U did reference investing regarding an earlier sale.

The PR asks why Mr and Mrs U would have traded in their existing Fractional Club membership for Fractional Club membership if not to invest, as they were already entitled to holiday with the Supplier. But, as I set out in my PD, Mr and Mrs U stated that they bought this Fractional Club membership '*because when we bought extra points we would have more availability and movement but that never happened.*' I think that was their goal at the Time of Sale.

So, ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr and Mrs U's purchasing decision. And for that reason, I do not think the credit relationship between Mr and Mrs U and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

### **S140A conclusion**

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

### **Overall conclusion**

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

### **My final decision**

For these reasons, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U and Mrs U to accept or reject my decision before 19 March 2026.

Nimish Patel  
**Ombudsman**