

The complaint

Mr and Mrs B'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 B purchased membership of a timeshare (the 'Fractional membership') from a timeshare provider (the 'Supplier') on 17 September 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy fractional membership at a cost of 21,052 Euros (the 'Purchase Agreement').

Fractional membership was asset backed – which meant it gave Mr and Mrs B 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 B paid for their Fractional membership by taking finance of £16,000 from the Lender (the 'Credit Agreement') in both of their names.

Mr and Mrs B – using a professional representative (the 'PR') – wrote to the Lender on 8 May 2019 (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 Mr and Mrs B's concerns as a complaint and issued its final response letter on 1 July 2019, 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.

The PR disagreed with the Investigator's assessment and asked for an Ombudsman's decision – although they didn't give any reasons or provide any further comments that they wished to be considered.

After their complaint had been allocated to a different Ombudsman at this Service, Mr B then explained he wanted to remove the PR as his and Mrs B's representative as he didn't feel they had articulated their complaint correctly. So, Mr B asked for some time to provide his own submissions on the complaint.

Following receipt of these further submissions, the complaint was then passed back to an Investigator to be assessed afresh in light of the further information and comments now provided. Having considered the information on file, this Investigator also rejected the complaint on its merits.

Mr (and Mrs) B did not agree with the outcome reached by the Investigator and asked for a

final decision to be made by an Ombudsman – which is why it has been passed to me.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance

Below are the most relevant provisions and/or guidance as they were at the relevant time:

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done so, I've reached the same outcome as the Investigator, for broadly the same reasons.

Mr (and Mrs) B have provided a significant amount of submissions throughout their complaint, all of which I've read and considered, along with all of the other available evidence. But, it's important to explain that 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. And, this reflects the informal nature of our Service, and my role in it.

I also note that Mr B has a range of concerns about the Supplier and Lender's conduct in a wider sense. I therefore think it's important to explain here that our Service does not have a regulatory role (that is the role of the Financial Conduct Authority (FCA)) and therefore some

of the concerns raised fall outside the scope of this decision. I've focused here on this particular complaint against the Lender and its individual circumstances.

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") 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.

Mr B has said that they were told by the Supplier at the Time of Sale that the membership was an investment when that was not true. However, this doesn't strike me as misrepresentation even if such representation(s) 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. And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn't any accompanying evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

Mr B has also said that Fractional membership had been misrepresented by the Supplier at the Time of Sale because they were told the Supplier would 'legally undo' their previous timeshare and then make a claim for a refund via the Spanish courts. And then, from this they would receive a payment of approximately 28,000 Euros 'around six months' later. He has also said they were told that while they were waiting for this refund, the Supplier would provide funds themselves to cover the first six months of the loan repayments. Then, once they received the refund, they could either use this to reduce their loan or for another purpose as they wished. But, he says none of these promises materialised and the refund 'did not arrive in the way described'.

From the information I've seen, at the Time of Sale, Mr and Mrs B had an existing timeshare with another supplier. And as part of the sale that is the subject of this complaint, they signed over their existing timeshare to the Supplier. The Supplier then sought to pursue a claim in relation to that timeshare through the Spanish courts in order to have the relevant purchase agreement deemed unlawful. And from what's been said, neither party disputes that the Supplier started that process, did provide a cheque to Mr and Mrs B which was the equivalent of six months of loan repayments, nor that Mr and Mrs B could use any payment received from the Spanish court process as they wished, including towards the loan.

I note Mr and Mrs B have only said they were given an approximation of the length of time such a claim would take. And, beyond making the bare allegation, they haven't elaborated further on this, such as what statements, if any, were made to them about the court process. I think being told such a claim process would be started and being given an estimate of how long it might take and how much they might expect to receive, isn't the same as giving an assurance or guarantee that the claim process would end on a specific date or that any payment due to Mr and Mrs B would be received on a set date, or that they would receive a specific amount. Further, given the nature and usual length of such court proceedings, I don't find it likely the Supplier made such a promise as this would open them up to complaints from customers within a relatively short time after sales had been made.

I also note that it doesn't appear Mr and Mrs B made any enquiries with the Supplier around the end of the six-month period referred to about their refund. Indeed, it doesn't seem this was raised at all until the original complaint was made around three and a half years later. And, this is difficult to understand if the misrepresentations that have been alleged in this regard were indeed made, and Mr and Mrs B entered into the Purchase Agreement on that basis.

So, having considered everything, Mr and Mrs B's claim of misrepresentation simply doesn't have sufficient weight to succeed.

I recognise that Mr and Mrs B have concerns about the way in which Fractional membership was sold by the Supplier, but 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.

Some of what Mr B has said suggests he feels the Supplier has not fulfilled its obligations as set out in the Purchase agreement. But, it hasn't particularly been explained what part of the contract he and Mrs B feel was breached, or why. And there simply isn't sufficient evidence to demonstrate that the Supplier failed to fulfil one or more of the terms of the Purchase Agreement.

So, from the evidence I've seen, I do not think the Lender is liable to pay Mr and Mrs B 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 B 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. What I know about the Supplier's commercial conduct;
2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation;
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.

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

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

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

Mr B says, for instance, that the right checks weren't carried out before the Lender lent to him and Mrs B. I haven't seen anything to persuade me that was the case in this complaint given its 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 B 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 B.

Mr B also suggests that there was one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Mr and Mrs B in practice, nor that any such terms led them to behave in a certain way to their detriment, I'm not persuaded that any of the terms governing Fractional membership are likely to have led to an unfairness that warrants a remedy.

I acknowledge that Mr and Mrs B 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 membership when they simply did not want to. They were also given a 14-day cooling off period (which Mr B has acknowledged and said they were told about at the Time of Sale), 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 B made the decision to purchase Fractional membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

I note Mr and Mrs B said the membership was misrepresented to them by the Supplier at the Time of Sale as an investment - which I've already addressed above.

However, I'm also mindful that Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations' - which were the regulations the Supplier had to comply with at the time of sale) prohibited the Supplier from marketing or selling the Fractional membership as an investment. So, had the Supplier breached the Timeshare Regulations, for this reason, that could be said to have rendered the credit relationship between the Lender and Mr and Mrs B unfair to them.

I acknowledge that the Supplier may have positioned Fractional membership to Mr and Mrs B as an investment. But, as neither of them have described to any extent what was said to them, by whom and in what circumstances to persuade me that the Supplier breached the prohibition of selling membership as an investment, I don't think it did. But, even if I'm wrong about that, I'm not persuaded it would make a difference to the outcome of this complaint anyway. The reason I say this is because Mr B has been clear that the main reason they purchased Fractional membership was to exit their existing timeshare and to have a shorter membership term. Indeed, he acknowledges that their existing timeshare was something they wanted to remedy at the Time of Sale and that it was this that played a pivotal role in their decision making. On my reading of what they've had to say, their decision to purchase Fractional membership was driven by a desire to escape the issues they were having with their existing timeshare.

I'm not persuaded, therefore, that the investment element of Fractional membership was material to Mr and Mrs B's purchasing decision so as to render their relationship with the Lender unfair to them had membership, in fact, been sold as an investment.

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

Mr B says he and Mrs B were not given sufficient information at the Time of Sale by the Supplier about various aspects of the Fractional membership, such as that the sale date of the Allocated Property could be postponed and that the fees could therefore continue past this date.

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 failures 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 B sufficient information, in good time, about certain aspects of their membership in order to satisfy the requirements of Regulation 12 of the 2010 Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see, for example, that the ongoing charges associated with the membership were applied unfairly in practice. And as Mr and Mrs B haven't persuaded me in this particular case that they would not have pressed ahead with their purchase had those details 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.

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 B and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. And, I don't therefore think it would be fair or reasonable that I uphold this complaint on that basis.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs B's Section 75 claims. I am not persuaded that the Lender was party to a credit relationship with Mr and Mrs B under the Credit 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.

I appreciate this will likely be disappointing for Mr and Mrs B, as I appreciate their strength of feeling on the matter. But, I hope I've clearly explained above why I've reached this conclusion.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 6 May 2026.

Fiona Mallinson
Ombudsman