

The complaint

Mr B's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by being party to an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA').

The loan in question was taken out in Mr B's sole name and as such, he is the only eligible complainant here. However, as the timeshare purchased using the loan was bought in the joint names of Mr B and Mrs B, I'll refer to them both throughout where appropriate.

What happened

Mr and Mrs B 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 13 April 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,660 fractional points at a cost of £24,870 (the 'Purchase Agreement'). But, after trading in their existing timeshare, they ended up paying £8,359 for their Fractional Club membership.

Fractional Club 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 Club membership by taking finance of £8,359 from the Lender (the 'Credit Agreement') in Mr B's name only.

Mr B – using a professional representative (the 'PR') – wrote to the Lender on 10 April 2024 (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 B's concerns as a complaint and issued its final response letter on 23 May 2024, 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 B 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. 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. 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

My provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And 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 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.

However, having considered the entirety of the credit relationship between Mr 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. 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; and, when relevant*
6. *Any existing unfairness from a related credit agreement.*

I have then considered the impact of these on the fairness of the credit relationship between Mr B and the Lender.

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

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

Mr B has suggested the right affordability checks weren't carried out at the Time of Sale. 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 B 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 B.

I also 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 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 B made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

The PR has also suggested that the Supplier made one or more misrepresentations at the Time of Sale.

In particular, they've said Mr and Mrs B were told that by purchasing the product they would have no problems in booking holidays wherever they chose. But they say that, in reality, holidays couldn't be booked outside of Tenerife and Spain and only then with limited success, in terms of when and where they could get availability, if at all.

I can see from Mr and Mrs B's signed Information Statement it explains that bookings are subject to availability and seasonal demand as well as being on a first-come, first-served basis. I can't see that any other guarantees were made.

I note that Mr B has said they were told that purchasing the membership would mean "availability would be much better as there would be more higher-quality holidays available as it was a more exclusive club". But, Mr B hasn't elaborated on this as to what exactly they were told, by whom and in what circumstances to add colour and context to their allegation here.

In short, therefore, I have not seen enough evidence to say, on balance, that any alleged false statements of fact were made to Mr and Mrs B by the Supplier.

Overall, therefore, I don't think that Mr B'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, perhaps the main reason, why the PR says the credit relationship with the Lender was unfair to him. And that's the suggestion that Fractional Club membership was marketed and sold to Mr and Mrs B 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 B'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 clearly constituted an investment as it offered Mr and Mrs B 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.

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 B 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 B, 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 B as an investment in breach of Regulation 14(3).

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

Was the credit relationship between the Lender and the Consumer 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 B 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 B 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 and Mrs B to enter into the Purchase Agreement and him to enter into the Credit Agreement is an important consideration.

Mr B has provided a witness statement which is signed and dated 21 March 2024. In this statement, he's described his purchasing history with the Supplier, leading up to the Time of Sale. I think it's fair to say from this that Mr and Mrs B went into the purchase at the Time of Sale being interested in holidays, particularly the type of holidays the Supplier could provide.

In addition, he's said they were told that their existing points membership was 'in perpetuity' and this led them into attending the sales presentation at the Time of Sale.

He then goes on to describe what happened at the Time of Sale and I note he has said:

"At the meeting we were pitched Fractional Timeshare Ownership (FTO), where we were told:

- a) We would be investing in property as we could rent it out and sell it when we wanted;*
- b) That the property would be sold in the future on a fixed date where I remember it was 10-15 years' time and we would receive a fraction of the proceeds of the sale;*
- c) That we would not need to sell if we did not want to as we could have an option to retain the property if we liked;*
- d) That CLC would find buyers for us and manage the sale and if by some chance they could not find a buyer CLC would buy it back from us at the best possible price;*
- e) That if we did not use the property, it would be rented out for us;*
- f) There were a number of scenarios illustrated on paper which the salesperson scribbled projections. They showed three scenarios from the worst to most*

likely and the best outcome. The worst showed a small profit the most likely a healthy profit and the best was very exciting;

- g) That availability would be much better as there would be more higher-quality holidays available as it was a more exclusive club;*
- h) That we could trade-in our previous Points purchases for the full valued paid against the cost of the FTO, where the balance of the cost could be financed with a loan.*

We were not told that CLC had a share in the property and could effectively block any proposed sale if they wanted.”

Part of my assessment of the testimony provided is to consider when it was written. I'm conscious that it was drafted after 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) ('Shawbrook & BPF v FOS') was handed down.

The PR has referenced this and so I think it's clear they and Mr B were aware of a case with similar circumstances which was upheld, as well as the reasons for that. So, I think there's a real risk that Mr B's recollections were influenced by that such that I can't place much, if any, weight on it.

I accept that Mr B's testimony indicates that he believes Fractional Club membership was marketed and sold to him and Mrs B as an investment. That, however, doesn't necessarily speak to their motivations in making the purchase. I acknowledge that he goes on to say that they wouldn't have made the purchase if they had known what the product was "truly about and that the investment was not as described".

This is the only point in his testimony where Mr B has mentioned this. And it's a line which bears significant similarities to ones I've seen in other customers' witness statements who are represented by the same PR. And, it's so similar that I'm not persuaded that it hasn't been influenced by external factors including the aforementioned judgment in Shawbrook & BPF v FOS, and it therefore might not be representative of Mr B's own thoughts at the Time of Sale.

Further, I note in his statement that Mr B has said they ended up surrendering their timeshare membership. The Lender has confirmed that this happened in September 2015 and said the reason cited for doing so at that time was 'health issues'. And, they've said Mr B did not mention the investment element of their membership or raise any questions about this at the point of surrender. This is ultimately difficult to explain if he and Mrs B had, as they now claim, purchased the membership on the basis of it being an investment which offered them the prospect of a financial gain.

So overall, 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 B decided to go ahead with their purchase. That doesn't mean they 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 B himself doesn'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 B'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). And for that reason, I do not think the credit relationship between Mr B and the Lender was unfair to him 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 B was not given sufficient, clear information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership.

But, 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 B 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 2010 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 B nor the PR have persuaded me in this particular case that he and Mrs B 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."

In conclusion, I was not persuaded that the Lender was party to a credit relationship with Mr B under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA – nor could I see any other reason why it would be fair or reasonable to direct the Lender to compensate him.

The Lender accepted my provisional decision and confirmed they had nothing further to add. The PR also responded and said Mr B didn't accept the provisional decision. But beyond that, they didn't provide any further comments or evidence they wished to be considered.

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.

As neither party has provided any new evidence or arguments, I don't believe there is any reason for me to reach a different conclusion from that which I reached in my provisional decision (outlined above). I do wish to stress that I have considered all the evidence and arguments afresh before reaching that conclusion.

My final decision

For the above reasons, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 April 2026.

Fiona Mallinson
Ombudsman