

The complaint

Mr and Mrs T's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA').

What happened

Mr and Mrs T 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 'Signature Collection' – which they bought on 20 June 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2,200 Signature Collection points at a cost of £24,999 (the 'Purchase Agreement'). But, after trading in their existing membership, they ended up paying £10,499 for their Signature Collection membership.

Signature Collection membership was asset backed – which meant it gave Mr and Mrs T 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 T paid for their Signature Collection membership by taking finance of £29,049 from the Lender (the 'Credit Agreement') in both of their names.

Mr and Mrs T – using a professional representative (the 'PR') – wrote to the Lender on 15 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 and Mrs T's concerns as a complaint and issued its final response letter on 3 June 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 and Mrs T 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 Signature Collection 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 and Mrs T 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 and Mrs T and the Lender.

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

Mr and Mrs T's complaint about the Lender being party to an unfair credit relationship was and is made for several reasons.

While Mr and Mrs T have suggested that the right affordability checks weren't carried out at the Time of Sale, 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 T 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 T.

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 T 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 T'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.

Mr and Mrs T's description of what they were told in this regard at the Time of Sale is somewhat different to what has been alleged in the Letter of Complaint. They've said they were told that "Availability would be no problem with FTO Signatures unlike Points as the Signature suites were sold for a fixed week annually or bi-annually...this upgrade guaranteed availability as they were for set weeks".

But they haven'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. It's also difficult to see how this particular statement would have been untrue as it's correct that Signature Collection membership in particular did offer guaranteed availability of their Allocated Property in a set week each year.

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 T by the Supplier.

Overall, therefore, I don't think that Mr and Mrs T'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 says the credit relationship with the Lender was unfair to them. And that's the suggestion that Signature Collection 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 T's Signature Collection 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 Signature Collection 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 T 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 Signature Collection 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 Signature Collection. They just regulated how such products were marketed and sold.

To conclude, therefore, that Signature Collection membership was marketed or sold to Mr and Mrs T 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 Signature Collection 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 Signature Collection 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 Signature Collection as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs T, 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 Signature Collection membership as an investment. So, I accept that it's equally possible that Signature Collection membership was marketed and sold to Mr and Mrs Tas 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 Mr and Mrs T 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 T 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 T 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.

Mr and Mrs T have provided a witness statement which is signed and dated 5 April 2024. In this statement, he's described his purchasing history with the Supplier, leading up to the Time of Sale. Mr and Mrs T were regular customers of the Supplier and had made a number of purchases from them previously, since 2004. And I think it's fair to say from their testimony here that they were interested in holidays, particularly the type of holidays the Supplier could provide.

In relation to this particular Time of Sale being considered here, they've said:

"In 2018 we changed the bi-annual Tenerife FTO Signature as we thought that we had made a good investment based upon the forecasts of resale values as provided by [the Supplier] and when we were also told that we could buy at a cheaper rate than normal due to someone selling and needing a quick deal we agreed to proceed as this accommodation was an apartment on one level so would be more suitable in the future. In addition we were again told that the points as stated at 15 (a) -(d) above. We took a loan consolidating the previous balance and the upgrade cost this time with [the Lender]. The [Supplier] representative reiterated what a good investment this was and how we would be able to sell the FTO Signature at a profit on the planned sale date in the future, exactly the same as the previous FTO Signature purchase we made."

The previous points they've referred to are in relation to a previous purchase as follows:

- "a) By upgrading to FTO Signature we would have an excellent investment opportunity, as we would own a fraction of the apartment and upon its sale, which was planned for sale on an exact date in nineteen years' time, we would get a financial return.*
- b) CLC would trade-in some of our previous timeshare points purchases against the cost of the new FTO Signature purchase to ensure that we had not lost money on the previous purchases of Points.*
- c) That we would get all of our money back that we had paid for timeshare so far and make a profit. They scribbled financial projections onto paper showing how much money we should make. They told us that the properties within FTO Signature were very easy to sell as people would always want holidays and CLC had plenty of people coming to them to buy these suites, making it a very good investment.*
- d) Availability would be no problem with FTO Signatures unlike Points as the Signature suites were sold for a fixed week annually or bi-annually. These were a limited number*

and we were being offered first as a valued customer. This upgrade guaranteed availability as they were for set weeks.”

Mr and Mrs T have also gone on to say:

“If we had known the true nature of what FTO Signature was, the true investment potential and the problems with the sale of FTO Signature we would have never entered into the agreement in the first place.”

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 and Mrs T 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 and Mrs T’s recollections were influenced by that such that I can’t place much, if any, weight on it.

I accept that Mr and Mrs T’s testimony indicates that they believe Signature Collection membership was marketed and sold to them as an investment. That, however, doesn’t necessarily speak to their motivations in making the purchase.

I note that Mr and Mrs T have indicated in what they’ve had to say about this Time of Sale that they purchased due to a cheaper rate being offered on particular accommodation which was all on one level, as this would be more suitable for them in future.

I acknowledge that they go on to say that if they had known the ‘true investment potential’, they never would have purchased in the first place. But, this is in a section where Mr and Mrs T are making a series of general statements about all of their previous purchases of Signature Collection membership. So, this ultimately doesn’t seem to necessarily be specific to this Time of Sale.

Further, the Lender has provided a copy of the sales note made by the Supplier at this Time of Sale, which says:

TSW Contact Note	Avz	6/20/2018	20:40	Client Liaison
<i>Note: Met w/couple wanting to trade in their biannual odd sunnigdale suite for MTR bi annual odd - same week. Also trade in FPOC 600pts. Visited MTR in the past stayed in a unit below the one purchasing. VERY happy about trade in. Planning to use week. Aware MF starts 2019. .Aware conv if decides to not use week. Consolidation from FHF to Shawbrook. Very happy to do so. Aware of overpmts, aware of penalty on capital balance when ready to settle loan. Missing bank account number, Mr will provide this tomorrow, had only sort code. Straigh fwd meeting, lovely couple, wants to enjoy holidays. Daughter is using as well mmnshp. Call next week to reconfirm send back deed and check if Chloe’s name is on it. Otherwise need to add.</i>				

And, this indicates that Mr and Mrs T made this particular purchase in order to enjoy the holidays membership could provide.

So overall, on my reading of the evidence before me, the prospect of a financial gain from Signature Collection membership was not an important and motivating factor when Mr and Mrs T 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 and Mrs T 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 Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs T's decision to purchase Signature Collection 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 T 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 T were not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Signature Collection 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 and Mrs T sufficient information, in good time, on the various charges they could have been subject to as Signature Collection 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 and Mrs T nor the PR have 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."

In conclusion, I was not persuaded that the Lender was party to a credit relationship with Mr and Mrs T under the Credit Agreement that was unfair to them 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 them.

The Lender accepted my provisional decision and confirmed they had nothing further to add. The PR also responded and said Mr and Mrs T 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 Mrs T and Mr T to accept or reject my decision before 9 April 2026.

Fiona Mallinson
Ombudsman