DRN-6232521

The complaint

Mr and Mrs 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 them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA').

What happened

Mr and Mrs B purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 10 November 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 11,000 fractional points (the 'Purchase Agreement'). After trading in 10,000 points of their existing timeshare, they ended up paying £7,173 for membership of the Fractional Club.

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 their Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr and Mrs B paid for their Fractional Club membership by taking finance of £7,173 from the Lender in both their names (the 'Credit Agreement').

Mr and Mrs B – using a professional representative (the 'PR') – wrote to the Lender on 14 January 2020 (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 10 February 2020, rejecting it on every ground.

Mr and Mrs B then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, ultimately upheld the complaint on its merits.

The Investigator thought that the Supplier had marketed and sold Fractional Club and Signature Collection memberships as an investment to Mr and Mrs B at the Time of Sale in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'). And given the impact of that breach on their purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mr and Mrs B was rendered unfair to them for the purposes of section 140A of the CCA.

The Lender 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') dated 14 November 2025. In that decision, I said:

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.

And having done that, I do not currently think this complaint should be upheld.

But 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?

Mr and Mrs B says that the credit relationship between them and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time of Sale that they have concerns about. It is those concerns that I explore here.

I have considered the entirety of the credit relationship between Mr and Mrs B and the Lender along with all of the circumstances of the complaint and I do not 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 Supplier's sales and marketing practices at the Time of Sale – which includes any training material that I think is likely to be relevant to the sale;*
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; and*
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.

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, all of which I set out at the start of this decision.

They include the allegation that the Supplier misled Mr and Mrs B and carried on unfair commercial practices which from my understanding would be prohibited under the CPUT Regulations. But given the limited evidence in this complaint, I am not persuaded that anything done or not done by the Supplier was prohibited under the CPUT Regulations.

They also include the suggestion that Fractional Club membership had been misrepresented by the Supplier because Mr and Mrs B were told that they were buying an interest in a specific piece of "real property" when that was not true. However, telling prospective members that they were buying a fraction or share of one of the Supplier's properties was not untrue. Mr and Mrs B's share in the Allocated Property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give them that interest, it did not change the fact that they acquired such an interest.

The allegation that the Supplier misrepresented the membership as "not a timeshare" is also not a persuasive one. I've seen no substantial detail about this claim, and I'm satisfied that the associated paperwork is clear on how the product's holiday element functioned similarly to the timeshare products Mr and Mrs B had previous experience using.

The PR has also said the Supplier told Mr and Mrs B that Fractional Membership had a guaranteed end date when that was not true. However, Mr and Mrs B's provided recollections contain no real detail about this accusation, and I've not seen enough evidence to persuade me that there was any false statement of existing fact made by the Supplier regarding this concern.

Similarly, the PR has also suggested that the Supplier misrepresented the product by stating that Mr and Mrs B would be saving years of management fees. However, I'm satisfied that this was not a misrepresentation - Fractional Club membership did provide a much shorter membership term than their existing timeshare and would result in fewer annual management fees.

What's more, as there's nothing else on file that persuades me there were any false statements of existing fact made to Mr and Mrs B by the Supplier at the Time of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reasons they allege. For these reasons, therefore, I do not think the Lender is liable to pay Mr and Mrs B any compensation for the alleged misrepresentations of the Supplier.

The PR says that the right checks weren't carried out before the Lender lent to Mr 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. Again, from the information provided, I am not satisfied that the lending was unaffordable for Mr and Mrs B. If there is any further information on this (or any other points raised in this provisional decision) that Mr and Mrs B wish to provide, I would invite them to do so in response to this provisional decision.

Mr and Mrs B say that they were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale. I acknowledge that they 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. Their witness testimony also accepts

that the Supplier highlighted the cooling off period to them at the time of sale. Moreover, they did go on to upgrade their Fractional Club membership again – which I find difficult to understand if the reason they went ahead with the purchase in question was because they were pressured into it. 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.

I'm not persuaded, therefore, that Mr and Mrs B'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 they say their 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.

Was Fractional Club membership marketed and sold at the Time of Sale as an investment in 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 membership of the Fractional Club 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 PR says that the Supplier did exactly that at the Time of Sale. So, that is what I have considered next.

The term "investment" is not defined in the Timeshare Regulations. In Shawbrook & BPF v FOS, the parties agreed that, 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" at [56]. I will use the same definition.

Mr and Mrs B's share in the Allocated Property clearly constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But 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. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr and Mrs B as an investment. So, it's possible that Fractional Club membership wasn't marketed or sold to them as an investment in breach of Regulation 14(3).

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. And Mr and Mrs B's testimony does allege that membership of the Fractional Club was described 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 is 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 B rendered unfair to them?

As the Supreme Court's judgment in Plevin makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

And in light of what the courts had to say in Carney and Kerrigan, 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 B and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) lead them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

But on balance, even if the Supplier had marketed or sold the Fractional 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). 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).

It's of course possible that Mr and Mrs B were interested in both holidays and the investment element of the memberships – and this wouldn't be surprising given the nature of the products at the centre of this complaint. I say this because Mr and Mrs B had a long history of using the Supplier's timeshare products dating back to 1996 before Fractional Club membership was an option. So, I'm at least satisfied that the product was not purchased solely as a means of investment.

And from my reading, their witness testimony suggests that rather than being motivated by the prospect of a financial gain, the potential exit from the timeshare was their primary motivation in their interactions with the Supplier. In their signed statement they say:

"we had to purchase more points to take us up to Silver + make it easy to sell if needed"

I acknowledge that their testimony also describes how they were told that the timeshare was an investment, but it's important to note the context in which this statement was provided. Crucially, this assertion is in response to their PR asking them to respond to the following question:

"Did they say that the ownership would increase in value, be an investment, or be easy to sell, even back to the resort?"

The response then provided lacks any detail around what was specifically said at the time of sale, or any relevant information about what kind of profit (if any at all) they were told they could expect to receive:

"Yes they told us it was a investment.

Also have noticed on [Supplier] fractional owner club key information resale & buyback. [Supplier] does not currently offer a resale facility. The Buyback programme is offered at [Supplier's] discretion."

Mr and Mrs B's PR then provide them a second opportunity to elaborate on this element of their complaint by asking "Did the representatives inform you that the ownership was valuable or had monetary value?" However, Mr and Mrs B have responded only with "Yes".

With all this in mind, I have doubts as to how much weight I can place on this testimony when making my decision. The response to the questions posed lack any specific detail around how the investment was described, or what kind of profit they were told to expect to receive. What's more, I can't ignore the parameters under which this statement was produced – the questions themselves could arguably be seen as leading. And whilst the questionnaire format the PR has provided the witness testimony within does allow Mr and Mrs B the opportunity to expand on things in their own words, each section is framed around specific allegations that I can only assume the PR has seen in similar cases. I think there is a very real risk that Mr and Mrs B's recollections may have been impacted, even subconsciously, by the format of their witness testimony.

Direct testimony from the consumer, in full and in their own words, is very important in a case like this. It allows the decision-maker to assess credibility and consistency, to know precisely what was supposedly said, and to understand the context in which it was supposedly said. For the reasons I've explained, that simply isn't possible in this instance.

The PR may say that what is contained in the Letter of Complaint is sufficient for me to understand what is likely to have happened at the Time of Sale. And I appreciate that the Letter of Complaint was probably prepared by the PR following conversations with Mr and Mrs B – after all, it contains personal information that only they would know. However, the Letter of Complaint (or claim) contains only a summary of Mr and Mrs B's allegations rather than any true insight to their perspective of the Sale. But even if I was able to rely primarily on the Letter of Complaint it would also suggest to me that the exit of the timeshare in and of itself was the primary motivation for Mr and Mrs B, rather than any expected profit:

"[…] they did not wish to burden their family with paying future management fees; my clients understood that this would provide them with an opportunity to rid themselves of their membership with [Supplier].

Furthermore, at the meeting, my clients were told that they would be saving years of management fees which, based on current fees, would be a saving of a significant sum of money."

Fractional Club membership did provide a much shorter membership term than their existing timeshare, so it is possible that this was attractive to Mr and Mrs B, as it meant they would have needed to pay their annual management fees for a shorter duration when compared to their existing membership.

On balance, 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). There is simply not enough reliable evidence to suggest this.

And for that reason, I do not think the credit relationship between Mr and Mrs B 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

Mr and Mrs B's Commission Complaint

I note that one of Mr and Mrs B's other concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. The Supreme Court's recent judgment Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 ('Johnson, Wrench and Hopcraft') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer–credit brokers. So, once I know more about the commission arrangements relevant to Mr and Mrs B's complaint, I will address this aspect of the complaint before finalising my thoughts overall.

Conclusion

In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim(s), and if I put the issue of commission to one side for the time being, 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 – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate them.

My provisional decision

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

In conclusion, given the facts and circumstances of this complaint, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs B's Section 75 claims, and I was not persuaded that the Lender was party to a credit relationship with them 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 could see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

Following my provisional decision, I also communicated how I was not persuaded that Mr and Mrs B's credit relationship with the Lender was unfair to them for reasons relating to the commission arrangements between it and the Supplier.

The Lender responded to the PD and accepted it.

The PR failed to respond by the deadlines provided. As such, I'm now finalising my decision.

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 Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

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.

As the Lender has accepted my PD and the PR has not provided further comments, I can confirm that I see no reason to depart from my provisional findings.

So 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 claim,

and I am not persuaded that the Lender was party to a credit relationship with them 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.

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 15 April 2026.

Paul Clarke
Ombudsman