DRN-6240965

The complaint

Mr and Mrs J'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 (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

What happened

Mr and Mrs J purchased membership of a timeshare (the 'Fractional Membership') from a timeshare provider (the 'Supplier') on 13 February 2013 (the 'Time of Sale').

Prior to that Mr and Mrs J were existing customers of the Supplier, having purchased at some point in time 15,000 points in its 'European Collection'.

These points worked like a currency such that, every year, Mr and Mrs J could use the points to stay at the Supplier's holiday accommodation. That accommodation 'cost' different amounts of points depending on the size of the apartment, its location and the time of year.

At the Time of Sale, Mr and Mrs J entered into an agreement with the Supplier (the 'Purchase Agreement') to buy 15,000 'fractional points', trading in their 15,000 existing points from their 'non-fractional' European Collection membership towards this. This was at a cost of £8,070, with a conversion price given for their European Collection points of £1 per point. This enrolled Mr and Mrs J into 'Fractional Owners Club' membership.

Unlike the European Collection, Fractional Membership was asset backed – which means it gave Mr and Mrs J 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 J paid for their Fractional Membership by taking finance of £6,936[1] from the Lender in both of their names (the 'Credit Agreement'). This finance was repaid in full in April 2015.

Mr and Mrs J – using a professional representative (the 'PR') – wrote to the Lender on 11 February 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.

Mr and Mrs J referred their complaint to the Financial Ombudsman Service on 13 March 2023. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

[1] Net of a deposit paid of £1,734

The Investigator thought that the Supplier had marketed and sold Fractional Club membership as an investment to Mr and Mrs J 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 J 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') on 20 March 2026. In that decision, I said:

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 currently think that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and/or selling Fractional Membership to Mr and Mrs J as an investment, which, in the circumstances of this complaint, rendered the credit relationship between them and the Lender unfair to them for the purposes of Section 140A of the CCA.

However, before I explain why, I want to make it clear that my role as an Ombudsman isn't to address every single point that has been made to date. Instead, it's to decide what's fair and reasonable in the circumstances of this complaint. So, while I recognise that there are a number of aspects to Mr and Mrs J's complaint, it isn't necessary to make formal findings on all of them. That is because, even if those aspects of the complaint ought to succeed, the redress I'm currently proposing puts Mr and Mrs J in the same or better position than they would be if the redress was limited to those other aspects of the complaint.

What's more, I've made my decision on the balance of probabilities – which means I've based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Mrs J's statement

The PR has provided a statement dated 26 February 2019 from Mrs J. This says:

"I was on holiday…in 2019 when I was approached by the representatives and invited to a meeting. This was a pressured sales presentation that lasted hours. The representatives were very persistent in trying to persuade me to purchase a timeshare product.

The representatives introduced me to the Fractional Property Owners Club. According to the representatives this would give me an investment in bricks and mortar property. The property would require to be sold on a set date in the future with [the Supplier] *assisting with the sale. When sold I would receive a profit from the sale and a guaranteed exit from my… contract.*

The fractional points investment would also offer me excellent availability to exclusive member only resorts. This is not the case.

…

I now know that fractional points are not an investment and [I] *wish to terminate my contract…"*

I've considered how much weight I can place on this statement when assessing the merits of Mr and Mrs J's complaint, especially in light of the Lender's comments on this particular point.

I acknowledge that in the statement reference is made to Fractional Club membership being purchased on 13 February 2019 (rather than 2013) and a purchase price of £6,930 (rather than £6,936). But in my view the former is simply a typographical error and the latter is either a typographical error or rounding on Mr and Mrs J's part.

I also acknowledge that this statement is dated 26 February 2019, two weeks after the Letter of Complaint was sent to the Lender. But I've seen evidence, in the form of a screenshot, that the PR had a telephone call scheduled with Mrs J for 28 January 2019. This fact, together with the PR having confirmed that the date on Mrs J's testimony is simply a typographical error on its part, I'm satisfied – on the balance of probabilities – that the statement that has been provided to our service was taken by the PR before it sent the Letter of Complaint to the Lender and the date of the statement isn't, in itself, grounds for me to find I shouldn't attach weight to it.

So whilst being mindful that Mrs J is recalling events from 2013, which was six years before her statement was written, and that memories can fade over time, I'm satisfied that I'm able to place weight on and rely on what Mrs J has said in her statement.

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

Having considered the entirety of the credit relationship between Mr and Mrs J and the Lender along with all of the circumstances of the complaint I 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've looked at all the evidence provided from both parties, including:

1. The Supplier's sales and marketing practices at the Time of 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've then considered the impact of the above on the fairness of the credit relationship between Mr and Mrs J and the Lender.

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

The Lender doesn't dispute, and I'm satisfied, that Mr and Mrs J's Fractional 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 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 Mr and Mrs J say that the Supplier did exactly that at the Time of Sale

The term "investment" isn't 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 J's share in the Allocated Property clearly, in my view, 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 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 didn't ban products such as the Fractional Membership. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Membership was marketed or sold to Mr and Mrs J as an investment in breach of Regulation 14(3), I've 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 Membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

I've not seen the Fractional Club membership paperwork, but I don't doubt that Mr and Mrs J would have seen and/or signed a number of documents that say, amongst other things, that Fractional Club membership shouldn't be viewed as an investment but that it should be viewed as the acquisition of holidays.

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. And for reasons I will come on to, given the facts and circumstances of this complaint, I think the Supplier is likely to have breached Regulation 14(3) of the Timeshare Regulations.

How the Supplier marketed and sold the Fractional Membership

Mr and Mrs J were already timeshare owners with 15,000 European Collection points at the Time of Sale. The purchase of Fractional Club membership involved the transfer of those points with no additional points being purchased at that time. So the purchase didn't give them any holiday entitlement beyond what they already had.

Given this, the Supplier must have promoted something other than taking holidays which persuaded Mr and Mrs J into thinking that purchasing Fractional Club membership was worthwhile.

Fractional Club membership was shorter than Mr and Mrs J's existing timeshare membership and I think it's more likely than not the Supplier will have highlighted this to Mr and Mrs J at the Time of Sale. However, I'm not satisfied they went ahead with the purchase because of this. So, the Supplier must have put forward another reason when selling Fractional Club membership.

There were only two other things that Fractional Club membership provided that weren't available to Mr and Mrs J through their existing European Collection membership. The first is the potential return on the sale of the Allocated Property. The second is the right to rent out Fractional Club points, if they chose not to use the points themselves for holidaying.

As noted by the Lender there is no mention of 'Wish to Rent Scheme' in the Letter of Complaint and it isn't in dispute that Mr and Mrs J haven't made use of the scheme. So, the purchase of Fractional Club membership by them only makes sense in my view if the other benefit of membership I refer to above, namely the possibility of a return on sale of the Allocated Property, had been promoted to Mr and Mrs J by the Supplier at the Time of Sale.

Given this, I find it more likely than not that this was put forward to them as a reason to purchase membership. And, given that there must have been some tangible benefit put forward to suggest why Mr and Mrs J purchase membership, I think it also more likely than not that the Supplier either explicitly said or suggested that they might make some financial gain or profit when membership ended.

Was the credit relationship between the Lender and the Consumer rendered unfair?

Having found 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 J and the Lender under the Credit Agreement and related Purchase Agreement – as the case law on Section 140A makes it clear that regulatory breaches don't 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'm to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs J 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.

With that in mind I've considered what, more likely than not, led Mr and Mrs J into entering into the Purchase Agreement and Credit Agreement.

Taking everything into account I'm satisfied, more likely than not, that although Mr and Mrs J would have been interested in the shorter term Fractional Club membership would give them, they were motivated to purchase Fractional Club membership by the possibility of a gain or profit on sale of the Allocated Property at the end of the membership period and this was the main reason they went ahead.

Mr and Mrs J haven't said, or suggested, for example, that they would have pressed ahead with the purchase had the Supplier not led them to believe that Fractional Club membership was an appealing investment opportunity. And as they faced the prospect of borrowing and repaying a substantial sum of money while subjecting themselves to long-term financial commitments, had they not been encouraged by the prospect of a financial gain from membership of the Fractional Club, I'm not persuaded they would have pressed ahead with the purchase regardless.

In conclusion, given the facts and circumstances of this complaint, I thought the Lender participated in and perpetuated an unfair credit relationship with Mr and Mrs J under the Credit Agreement and related Purchase Agreement for the purposes of section 140A CCA and because of this I thought it was fair and reasonable for me to uphold the complaint.

I then set out what I thought the Lender should have to do to compensate Mr and Mrs J.

The PR responded to my provisional findings to say that Mr and Mrs J accepted them.

The Lender said it didn't intend to challenge my provisional findings given the specific facts of this case. It did share its observations on three aspects of the provisional decision that it didn't agree with, but it didn't ask me to revisit my provisional findings.

The legal and regulatory context

In considering what's fair and reasonable in all the circumstances of the complaint, I'm 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 isn't necessary to set out that context in detail here.

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.

I note the points the Lender raises in response to, and about, my provisional findings. But, given neither party has asked me to revisit my provisional findings, provided any new evidence or arguments, and in the absence of any other reason to depart from my provisional findings I now confirm them as final.

Putting things right

Having found that Mr and Mrs J wouldn't have agreed to purchase Fractional Membership at the Time of Sale were it not for the breach of Regulation 14(3) of the Timeshare Regulations by the Supplier (as deemed agent for the Lender), and the impact of that breach meaning that, in my view, the relationship between the Lender and the Consumer was unfair under section 140A of the CCA, I think it would be fair and reasonable to put them back in the position they would have been in had they not purchased the Fractional Membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr and Mrs J agree to assign to the Lender their Fractional Points or hold them on trust for the Lender if that can be achieved.

Mr and Mrs J were existing European Collection members and their membership was traded in against the purchase price of Fractional Membership. Under their European Collection membership, they had 15,000 European Collection Points. And, like Fractional Membership, they had to pay annual management charges as a European Collection member. So, had Mr and Mrs J not purchased Fractional Membership, they would have always been responsible to pay an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Mr and Mrs J from the Time of Sale as part of their Fractional Membership should amount only to the difference between those charges and the annual management charges they would have paid as ongoing European Collection members.

So, here's what I think needs to be done to compensate Mr and Mrs J with that being the case – whether or not a court would award such compensation:

(1) The Lender should refund Mr and Mrs J's repayments to it under the Credit Agreement and the deposit they paid towards the purchase. I don't belive there is an outstanding balance on the loan, but the Lender should cancel if it if there is one.

(2) In addition to (1), the Lender should also refund the difference between Mr and Mrs J's Fractional Membership annual management charges paid after the Time of Sale and what their European Collection annual management charges would have been had they not purchased Fractional Membership.

(3) The Lender can deduct:

   i. The value of any promotional giveaways that Mr and Mrs J used or took advantage of; and

   ii. The market value of the holidays* Mr and Mrs J took using their Fractional Points if the Points value of the holiday(s) taken amounted to more than the total number of European Collection Points they would have been entitled to use at the time of the holiday(s) as ongoing European Collection members. However, this deduction should be proportionate and relate only to the additional Fractional Points that were required to take the holiday(s) in question.

      For example, if Mr and Mrs J took a holiday worth 2,550 Fractional Points and they would have been entitled to use a total of 2,500 European Collection Points at the relevant time, any deduction for the market value of that holiday should relate only to the 50 additional Fractional Points that were required to take it. But if they would have been entitled to use 2,600 European Collection Points, for instance, there shouldn't be a deduction for the market value of the relevant holiday.

(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)

(4) Simple interest** at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.

(5) The Lender should remove any adverse information recorded on Mr and Mrs J's credit files in connection with the Credit Agreement reported within six years of this decision.

(6) If Mr and Mrs J's Fractional Membership is still in place at the time of this decision, as long as they agree to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of their Fractional Membership.

**I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr and Mrs J took using their Fractional Points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect their usage.*

***HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give the consumer a certificate showing how much tax it's taken off if they ask for one.*

My final decision

For the reasons I've explained, my final decision is that to settle this complaint, Shawbrook Bank Limited must take the steps I've set out above.

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

Peter Cook
Ombudsman