DRN-4481807

The complaint

Mr and Mrs C's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably under the Consumer Credit Act 1974 (as amended) (the 'CCA').

Background to the complaint

Mr and Mrs C were existing members of a timeshare they bought from a timeshare provider (the 'Supplier'). They held 2,501 points with the Supplier that they could use to gain access to holiday accommodation.

On 10 October 2013 (the 'Time of Sale 1'), they entered into an agreement with the Supplier to buy another timeshare ('Fractional Club 1') which gave them 2,550 fractional points at a cost of £36,907 (the 'Purchase Agreement 1'). But after trading in their existing timeshare, they ended up paying £9,396 for membership of the Fractional Club 1.

Mr and Mrs C paid for the Fractional Club 1 membership by taking finance of £9,396 from the Lender (the 'Credit Agreement 1').

On 19 November 2014 (the 'Time of Sale 2'), Mr and Mrs C traded in the Fractional Club 1 membership for another timeshare (the 'Fractional Club 2'). They entered into an agreement with the Supplier to buy 2,790 fractional points at a cost of £35,368 (the 'Purchase Agreement 2'). But after trading in the Fractional Club 1 membership, they ended up paying £7,588. They paid for this using finance of £17,266 from the Lender (the 'Credit Agreement 2'), which included the consolidation of Credit Agreement 1.

The Fractional Club 1 and Fractional Club 2 memberships were asset backed – which meant they gave Mr and Mrs C more than just holiday rights. They also included a share in the net sale proceeds of a property named on their Purchase Agreements (the 'Allocated Property') after their membership terms end.

Mr and Mrs C – using a professional representative (the 'PR') – wrote to the Lender on 5 October 2018 (the 'Letter of Complaint') to complain about the events that happened at the Time of Sale 1 and Time of Sale 2, referring to Section 75 of the CCA.

The PR's Letter of Complaint reads:

"Our clients were members of [the Supplier's] Points system. These were in perpetuity and, as their family did not want them, they were told the only way to get out of points was to buy into [the Supplier's] Fractional Timeshare. Told [the Supplier] would sell their fractions after nineteen years. It states in the contract that they will only sell Fractions if the client buys into a Freehold Property with [the Supplier]. It is against the new Timeshare Act, which came out in 2012, to sell Timeshare as an investment.

They were told this untruth by the Sales team at [the Supplier] but after purchasing Fractional, they discovered they could have simply handed the Points back and been out of the maintenance trap. As Points Members they held a total of 2,501 Points. When they "upgraded" to Fractional they had 2790 Fractional Points for which they paid £17,000. The

difference between Points and Fractional Points they held is 289 Points. If they were not sold this as an investment for the future, who in their right mind, would pay £17,000 for 289 extra points?

Also, they are finding it extremely difficult to book holidays now as there is hardly any availability due to [the Supplier] being advertised on the internet e.g [third-party website] at a much reduced rate than [the Supplier] members are paying in maintenance fees. They also feel that this situation will only worsen, in view of the very extensive television advertising from [the Supplier]. Also, the maintenance fees are now £800 per year which is extortionate !!

They feel very badly let down by the lies which they were subjected to and are, therefore, claiming a full refund under Section 75 of the Consumer Credit Act of 1974 as this product was definitely mis-sold to them.

We also enclose further documentation from other unhappy clients.

We enclose all relevant documents and signed Letter of Authorisation".

The Lender dealt with Mr and Mrs C's concerns as a complaint and issued its final response letter on 26 February 2019, rejecting it on every ground.

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

The PR disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I agreed with the outcome reached by our Investigator but wished to expand the reasoning for doing so. Therefore, I issued a provisional decision (the 'PD') setting out why I thought the complaint ought to be rejected.

In the PD, I first set out the legal and regulatory context for the complaint, as well as what I thought was representative of good industry practice at the Time of Sale:

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.

I will refer to and set out several regulatory requirements, legal concepts and guidance in this decision, but I am satisfied that of particular relevance to this complaint is:

- *The CCA (including Section 75, 75A and Sections 140A-140C).*
- *The law on misrepresentation.*
- *The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').*
- *Case law on Section 140A of the CCA – including, in particular:*
    - *The Supreme Court's judgment in Plevin v Paragon Personal Finance Ltd [2014] UKSC 61 ('Plevin') (which remains the leading case in this area).*

- *Scotland v British Credit Trust [2014] EWCA Civ 790 ('Scotland and Reast')*
- *Patel v Patel [2009] EWHC 3264 (QB) ('Patel').*
- *The Supreme Court's judgment in Smith v Royal Bank of Scotland Plc [2023] UKSC 34 ('Smith').*
- *Carney v NM Rothschild & Sons Ltd [2018] EWHC 958 ('Carney').*
- *Kerrigan v Elevate Credit International Ltd [2020] EWHC 2169 (Comm) ('Kerrigan').*
- *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').*

Good industry practice – the RDO Code

The Timeshare Regulations provided a regulatory framework. But as the parties to this complaint already know, I am also required to take into account, when appropriate, what I consider to have been good industry practice at the relevant time – which, in this complaint, includes the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code').

I then gave my provisional findings, which were as follows:

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.

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.

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

Regrettably, the PR hasn't provided a witness statement from Mr and Mrs C – or anything else that sets out in their own words what happened.

I appreciate that the Letter of Complaint was probably prepared by the PR following a conversation with Mr and Mrs C. After all, it contains personal information that only Mr and Mrs C would know. However, a letter of complaint (or claim) is not evidence – especially when, as here, it contains bare allegations or a mere summary of the consumer's allegations.

Direct testimony from the consumer, in full and in their own words, is 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. Here, that simply isn't possible. It's also important that the decision-maker can see that the Letter of Complaint genuinely reflects the consumer's testimony. Again, that simply isn't possible in this case.

All things considered, I'm unable to place much evidentiary weight on the Letter of Complaint.

In the absence of direct testimony from the consumer, I have to rely on the paperwork that's been provided, and the particular circumstances of the case.

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mr and Mrs C could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including the condition that the cash price of the purchase must exceed £100 but not exceed £30,000. So, if the purchase price of the product is in excess of £30,000, irrespective of the value of any trade-in, a claim under Section 75 cannot succeed.

As I have seen from the purchase documents, Mr and Mrs C's Fractional Club 1 membership had a cash price of £36,907 and Fractional Club 2 membership had a cash price of £35,368, which are both greater than the upper limit covered by Section 75. So, I am satisfied that Mr and Mrs C's claims under Section 75 for misrepresentation cannot succeed for this reason.

Section 75A of the CCA: the Supplier's breach of contract

I've already summarised how Section 75 of the CCA works and why it gives Mr and Mrs C a right of recourse against the Lender. So, it isn't necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement 1 and/or the Purchase Agreement 2, the Lender is also liable.

The PR says in the Letter of Complaint that Mr and Mrs C found it "extremely difficult" to book holidays using their Fractional Club 1 and 2 memberships. By this, I understand the PR is alleging that there was a breach of the Purchase Agreement 1 and 2 by the Supplier as a result of something it has done or not done.

Section 75A CCA makes further provision for a creditor to be liable for breaches by the Supplier, in the event that certain conditions are met. One of these conditions is that the cost of the goods or service is over £30,000 and the linked Credit Agreement is for credit which does not exceed £60,260. One of the following conditions must also be met:

- *The Supplier cannot be traced.*
- *The Debtor has contacted the Supplier, but the Supplier has not responded.*
- *The Supplier is insolvent.*
- *The Debtor has taken reasonable steps to pursue his claim against the Supplier but has not obtained satisfaction for his claim.*

I have not seen sufficient evidence to satisfy me that one or more of those conditions have been met. However, in Mr and Mrs C's case, I don't think this matters as I have not seen enough evidence that they were unable to use their Fractional Club 1 or Fractional Club 2 membership to take holidays in the same way they could initially. And the Supplier says they had successfully booked holidays 17 times using either of their memberships and had four more holidays booked at the time it responded to the Lender. So, if this is the case, I am unsure why Mr and Mrs C feel they have struggled to use their memberships to book holidays.

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mr and Mrs C any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75A claim in question.

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

I have already explained why I am not persuaded that Mr and Mrs C had a successful claim under Sections 75 and 75A of the CCA. But the PR also suggests the Fractional Club 1 and Fractional Club 2 memberships were sold to Mr and Mrs C as investments when it was not supposed to have done, as it says:

"It is against the new Timeshare Act, which came out in 2012, to sell Timeshare as an investment".

The Lender does not dispute, and I am satisfied, that Mr and Mrs C's Fractional Club 1 and Fractional Club 2 memberships 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 the PR says that the Supplier did exactly that. So, for completeness, that is what I have considered here.

However, as a possible breach of Regulation 14(3) does not fall neatly into a claim under Sections 75 or 75A of the CCA, I must turn to another provision of the CCA if I am to consider this aspect of the complaint and arrive at a fair and reasonable outcome. And that provision is Section 140A.

Under Section 140A of the CCA, a debtor-creditor relationship can be found to have been or be unfair to the debtor because of one or more of the following: the terms of the credit agreement itself; how the creditor exercised or enforced its rights under the agreement; and any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement) (s.140A(1) CCA). Such a finding may also be based on the terms of any related agreement (which here, includes the Purchase Agreement 1 and the Purchase Agreement 2) and, when combined with Section 56 of the CCA, on anything done or not done by the supplier on the creditor's behalf before the making of the credit agreement or any related agreement.

Section 56 plays an important role in the CCA because it defines the terms "antecedent negotiations" and "negotiator". As a result, it provides a foundation for a number of provisions that follow it. But it also creates a statutory agency in particular circumstances. And while Section 56(1) sets out three of them, the most relevant to this complaint are negotiations conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement.

A debtor-creditor-supplier agreement is defined by Section 12(b) of the CCA as "a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier […]". And Section 11(1)(b) of the CCA says that a restricted-use credit agreement is a regulated credit agreement used to "finance a transaction between the debtor and a person (the 'supplier') other than the creditor […] and "restricted-use credit" shall be construed accordingly."

The Lender doesn't dispute that there was a pre-existing arrangement between it and the Supplier. So, the negotiations conducted by the Supplier during the sale of Mr and Mrs C's membership of the Fractional Club 1 and Fractional Club 2 were conducted in relation to transactions financed or proposed to be financed by a debtor-creditor-supplier agreement as defined by Section 12(b). That made them antecedent negotiations under Section 56(1)(c) – which, in turn, meant that they were conducted by the Supplier as an agent for the Lender as per Section 56(2). And such antecedent negotiations were "any other thing done (or not done) by, or on behalf of, the creditor" under s.140(1)(c) CCA.

Antecedent negotiations under Section 56 cover both the acts and omissions of the Supplier, as Lord Sumption made clear in Plevin, at paragraph 31:

"[Section] 56 provides that [when] antecedent negotiations for a debtor-creditor-supplier agreement are conducted by a credit-broker or the supplier, the negotiations are "deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity". The result is that the debtor's statutory rights of withdrawal from prospective agreements, cancellation and rescission may arise on account of the conduct of the negotiator whether or not he was the creditor's agent.' […] Sections 56 and 140A(3) provide for a deemed agency, even in a case where there is no actual one. […] These provisions are there because without them the creditor's responsibility would be engaged only by its own acts or omissions or those of its agents."

And this was recognised by Mrs Justice Collins Rice in Shawbrook & BPF v FOS at paragraph 135:

"By virtue of the deemed agency provision of s.56, therefore, acts or omissions 'by or on behalf of' the bank within s.140A(1)(c) may include acts or omissions of the timeshare company in 'antecedent negotiations' with the consumer".

In the case of Scotland & Reast, the Court of Appeal said, at paragraph 56, that the effect of Section 56(2) of the CCA meant that "negotiations are deemed to have been conducted by the negotiator as agent for the creditor, and that is so irrespective of what the position would have been at common law" before going on to say the following in paragraph 74:

"[...] there is nothing in the wording of s.56(2) to suggest any legislative intent to limit its application so as to exclude s.140A. Moreover, the words in s.140A(1)(c) "any other thing done (or not done) by, or on behalf of, the creditor" are entirely apposite to include antecedent negotiations falling within the scope of s.56(1)(c) and which are deemed by s.56(2) to have been conducted by the supplier as agent of the creditor. Indeed the purpose of s.56(2) is to render the creditor responsible for such statements made by the negotiator

and so it seems to me wholly consistent with the scheme of the Act that, where appropriate, they should be taken into account in assessing whether the relationship between the creditor and the debtor is unfair."[1]

So, the Supplier is deemed to be the Lender's statutory agent for the purpose of the pre-contractual negotiations.

However, an assessment of unfairness under Section 140A isn't limited to what happened immediately before or at the time a credit agreement and related agreement were entered into. The High Court held in Patel (which was recently approved by the Supreme Court in the case of Smith), that determining whether or not the relationship complained of was unfair had to be made "having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination" – which was the date of the trial in the case of an existing credit relationship or otherwise the date the credit relationship ended.

The breadth of the unfair relationship test under Section 140A, therefore, is stark. But it isn't a right afforded to a debtor simply because of a breach of a legal or equitable duty. As the Supreme Court said in Plevin (at paragraph 17):

"Section 140A […] does not impose any obligation and is not concerned with the question whether the creditor or anyone else is in breach of a duty. It is concerned with […] whether the creditor's relationship with the debtor was unfair."

Instead, it was said by the Supreme Court in Plevin that the protection afforded to debtors by Section 140A is the consequence of all of the relevant facts.

I have considered the entirety of the credit relationship between Mr and Mrs C and the Lender along with all of the circumstances of the complaint and I do not think the credit relationships between them were 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 all the evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale 1 and the Time of Sale 2.

I have then considered the impact of these on the fairness of the credit relationships between Mr and Mrs C and the Lender.

As I have already said, although the PR has not correctly identified the Timeshare Regulations, or what these say, in effect it says that the Supplier breached Regulation 14(3) of the Timeshare Regulations. 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 C'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 Club 1 and Fractional Club 2 memberships 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.

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[1] The Court of Appeal's decision in *Scotland* was recently followed in *Smith*.

They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club 1 and Fractional Club 2 memberships were marketed or sold to Mr and Mrs C 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.

From the contemporaneous paperwork from both sales, it seems the Supplier did make efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs C, 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. For example, the Member's Declaration document for both purchases says:

"We understand that the purchase of our Fraction is for the primary purpose of holidays and is not specifically for direct purposes of a trade in and that [the Supplier] makes no representation as to the future price or value of the Fraction."

With that said, I accept that it's possible that Fractional Club membership was marketed and sold to Mr and Mrs C as an investment in breach of Regulation 14(3) given the difficulty the Supplier was likely to have had in presenting a share in the net sales proceeds of the Allocated Property as an important feature of Fractional Club membership without breaching the relevant prohibition.

However, given the specific circumstances of this case, I don't think it's necessary to make a finding on this point because, as I'll go on to explain, I'm not currently persuaded that would make a difference to Mr and Mrs C's complaint anyway.

<u>Were the credit relationships between the Lender and Mr and Mrs C rendered unfair?</u>

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.

I am also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in Carney and Kerrigan (respectively) on causation.

In Carney, HHJ Waksman QC said the following in paragraph 51:

"[…] In cases of wrong advice and misrepresentation, it would be odd if any relief could be considered if they did not have at least some material impact on the debtor when deciding whether or not to enter the agreement. […] in a case like the one before me, if in fact the debtors would have entered into the agreement in any event, this must surely count against a finding of unfair relationship under s140A. […]"

And in Kerrigan, HHJ Worster said this in paragraphs 213 and 214:

"[…] The terms of section 140A(1) CCA do not impose a requirement of "causation" in the sense that the debtor must show that a breach caused a loss for an award of substantial damages to be made. The focus is on the unfairness of the relationship, and the court's approach to the granting of relief is informed by that, rather than by a demonstration that a

*particular act caused a particular loss. Section 140A(1) provides only that the court **may** make an order **if** it determines that the relationship is unfair to the debtor. […]*

[…] There is a link between (i) the failings of the creditor which lead to the unfairness in the relationship, (ii) the unfairness itself, and (iii) the relief. It is not to be analysed in the sort of linear terms which arise when considering causation proper. The court is to have regard to all the relevant circumstances when determining whether the relationship is unfair, and the same sort of approach applies when considering what relief is required to remedy that unfairness. […]"

So, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to credit relationships between Mr and Mrs C and the Lender that were unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) which, having taken place during its antecedent negotiations with them, is covered by Section 56 of the CCA, falls within the notion of "any other thing done (or not done) by, or on behalf of, the creditor" for the purposes of 140(1)(c) of the CCA and deemed to be something done by the Lender) led them to enter into the Purchase Agreement 1, Purchase Agreement 2 and the Credit Agreement 1 and Credit Agreement 2 is an important consideration.

On my reading of the evidence provided, I'm not persuaded that was what is more likely than not to have happened at the Time of Sale 1 or Time of Sale 2. I'll explain why.

The Letter of Complaint to the Lender provides information regarding the claim and complaint, but this is not testimony from Mr and Mrs C. It does not set out their first-hand recollections of what happened at the Time of Sale 1 or Time of Sale 2, nor does it help me in any way to understand Mr and Mrs C's motivation to make the purchases. And that is important here. If I am to find that a breach of Regulation 14(3) was material to either or both sales, I need to be persuaded that Mr and Mrs C's motivation to purchase either membership was because they were investments, with the possibility of a profit at the end.

One of our Investigators asked Mr and Mrs C for written testimony, to better understand what they think went wrong at the Time of Sale 1 and Time of Sale 2. The PR replied and asked that she contact them instead, so the Investigator did just that. But the PR didn't reply to the request.

As such, another Investigator issued her findings on the complaint without seeing any witness testimony. She rejected the complaint in its entirety. The PR's full response to her findings reads:

"Please refer to Ombudsman for review."

So, in the absence of any direct testimony, I have looked at the circumstances surrounding the sale, and Mr and Mrs C's situation at the time.

As I've said, Mr and Mrs C were existing members of a points-based timeshare with the Supplier. Although the Letter of Complaint sets out that they were dissatisfied with this membership, there is no evidence to support this. The Supplier disputes this, saying that Mr and Mrs C took 24 holidays from 2002 to 2013 with their points membership, and this continued after they became members of the Fractional Club with a further 17 holidays taken over six years.

Fractional memberships, such as Fractional Club 1 and Fractional Club 2 also had a significantly shorter membership term, which meant that members would be responsible for paying annual management fees for a significantly shorter period than they would be under

their points-based membership. And the Letter of Complaint sets out that Mr and Mrs C were concerned that their existing membership would be held in perpetuity.

So, in the absence of any direct evidence as to their motivations at the Time of Sale 1 and Time of Sale 2, and given their circumstances, I am not persuaded, on the balance of probabilities, that they were induced into the purchase of Fractional Club 1 or the Fractional Club 2 on the basis that it was an investment which could provide them with a financial gain.

On balance, therefore, even if the Supplier had marketed or sold its Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs C's decision to purchase Fractional Club membership at the Time of Sale 1 or 2 was motivated by the prospect of a financial gain (i.e., a profit).

In conclusion, therefore, given all the facts and circumstances of this complaint, I don't think the credit relationships between the Lender and Mr and Mrs C were unfair to them for the purposes of Section 140A. And taking everything into account, I think it's fair and reasonable to reject this aspect of their complaint on that basis.

Responses to the PD

The Lender agreed with the findings in my PD.

The PR confirmed receipt of the PD and said it would get back as soon as possible, but it has not responded and the deadline for doing so has passed.

What I've decided – and why

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

And as I haven't received any new submissions from either party in response to my PD, I see no reason to depart from the conclusion I reached in my PD.

Conclusion

I don't think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs C's claim under Section 75 of the CCA, and I am not persuaded that the Lender was party to a credit relationship with them for the purposes of Section 140A 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 Mr and Mrs C.

My final decision

For the reasons I've given above, I do not uphold Mr and Mrs C's complaint against Shawbrook Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 14 July 2025.

Andrew Anderson
Ombudsman