DRN-4561073

The complaint

Mr and Mrs Q'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 Q purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 17 February 2016 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy the right to occupy a certain apartment during week 12 of every year from 2017 to 2030 (the 'Purchase Agreement'). They ended up paying €18,125.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs Q 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 Q paid for their Fractional Club membership by taking finance of £14,500 from the Lender (the 'Credit Agreement').

Mr and Mrs Q – using a professional representative (the 'PR') – wrote to the Lender on 7 May 2019 (the 'Letter of Complaint') to complain about the events that happened at the Time of Sale. The PR says the Supplier made the following misrepresentations:

- The Supplier would terminate Mr and Mrs Q's existing timeshare agreement they held with another timeshare provider.
- The membership they were buying from the supplier would only run until 2030 and the resort would be sold, enabling them to recoup "*some, if not all, of their money*".
- They were told that "*in 2020 the Russian market would open up and that they could sell earlier, if they wished, and were guaranteed to make a profit*."
- They were told they could expect to make a profit from rental income if they didn't use their weeks.

The PR says that Mr and Mrs Q never received any rental income from their unused weeks and that neither this, nor the eventual sale of the resort in 2030 will happen now because the Supplier has ceased trading.

The PR also referred to a Spanish court case that it says shows that "*more than one person has been mis-sold"* by the Supplier.

The Lender dealt with Mr and Mrs Q's concerns as a complaint and issued its final response letter on 28 June 2019, rejecting it on every ground.

Mr and Mrs Q 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 complaint was later passed to another Investigator who also rejected the complaint.

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

I set out my thoughts in a provisional decision (the 'PD'). In short, I agreed with the Investigator but wanted to give both parties to consider what I said, and provide any further evidence and arguments, before I set out my final decision. I began by setting out the legal and regulatory context and what I considered to be good industry practice, as follows:

"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 acknowledge that the Supplier was not signed up to the RDO Code, nor was it required to be. However, I still think the RDO Code is a relevant consideration in that it sets out what good industry practice looked like at the Time of Sale."

I then set out my provisional findings, 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's 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.

I would also like to set out my thoughts on the information provided to me by the PR during the course of this complaint.

As I've said, the PR, on 7 May 2019, wrote to the Lender setting out the matters that were being complained about, and I have summarised these above. In response to the Investigator's request for any testimony in Mr and Mrs Q's own words, the PR said that its Letter of Complaint is the personal statement, and it is "a detailed account from our clients of the sales meeting they attended". But I have seen other letters of complaint written by the PR that are virtually identical to the one sent about Mr and Mrs Q's Fractional Club purchase.

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, the PR hasn't presented me with any direct testimony. 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.

In any event, the Letter of Complaint contains no evidence of what happened at the Time of Sale. It only sets out what the PR says are Mr and Mrs Q's concerns.

Given the limited extent to which I'm able to place any evidentiary weight on the Letter of Complaint, I have thought about the paperwork that Mr and Mrs Q were given at the Time of Sale, and the particular circumstances of their 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 Q could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mr and Mrs Q at the Time of Sale, the Lender is also liable.

This part of the complaint was made by the PR as I set out at the start of this decision. While I recognise that Mr and Mrs Q have concerns about the way in which the Timeshare membership was sold to them, they haven't persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for any of the reasons they allege. I will explain my reasons for making this finding.

As I've said, the Letter of Complaint provided does not offer any evidence of what happened at the Time of Sale.

For example, the PR hasn't provided me with any evidence to support the allegation that Mr and Mrs Q were told they would receive rental income in the years that they didn't use their week, or that this wasn't provided to them.

Likewise, I've not been given any evidence to support the allegation that Mr and Mrs Q were told they could sell their membership in 2020. There is nothing in the paperwork that suggests that a "Russian market" was due to open, or any direct testimony to explain what was understood by this.

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 Q 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 Q any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

Section 75 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 Q 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, the Lender is also liable.

The PR says in the Letter of Complaint that Mr and Mrs Q would no longer be able to receive a return because the Supplier had ceased trading.

But, given the lack of evidence to support this allegation, I am not persuaded that there has been a breach of contract here which warrants compensation.

The Supplier says it is a third-party trustee that is responsible for the sale of the resort after 2030. And this is reflected in the paperwork, and in my understanding of how fractional timeshares operate, so I have seen nothing which could make me think that the sale of the Allocated Property will not proceed in the manner set out in the contractual documentation.

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mr and Mrs Q 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 75 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 Q had a successful claim under Section 75 of the CCA. But, the PR also says the Fractional Club membership was sold to Mr and Mrs Q as an investment when it was not supposed to be.

The Lender does not dispute, and I am satisfied, that Mr and Mrs Q'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 the PR, in the Letter of Complaint, says that the Supplier did exactly that at the Time of Sale. So, 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) 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 Q's membership of the Fractional Club were conducted in relation to a transaction 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):

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

"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 Q 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 all the evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale.

I have then considered the impact of this on the fairness of the credit relationship between Mr and Mrs Q and the Lender.

As I have already said, although the PR has not referred to any regulations, 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 Q'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 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 Q 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 evidence presented to me, I can see 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 Q, 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, I've been shown a document titled "Declaration of Treating Customers Fairly Sales Practice". This contains the following declarations:

"2. I/We understand that this is a holiday based purchase and I/We believe that meets our future holiday needs that I/We will be able to use and enjoy.

3. My/Our representative [Name] or their Manager [Name] has fully explained how this membership/RCI Weeks product will benefit us in the future.

[…]

1. *I/We [Mr and Mrs Q] agree that I/We have not entered into this purchase purely for a wider investment opportunity or financial gain.*

Following this, there's a section asking how Mr and Mrs Q enjoyed the presentation, and they have written: "We were made comfortable and everything was explained thoroughly to us."

With that said, I accept that it's possible that Fractional Club membership was marketed and sold to Mr and Mrs Q 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, 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 Q's complaint anyway.

Was the credit relationship between the Lender and Mr and Mrs Q rendered unfair?

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 a credit relationship between Mr and Mrs Q and the Lender that was unfair to them 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 and the Credit Agreement 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. I'll explain why.

As I've said before, there is simply no evidence about what happened at the Time of Sale which supports this allegation. There is little evidence which makes me think Mr and Mrs Q were motivated to purchase their Fractional Club membership at the Time of Sale due to the potential profit it could bring them when the property was due to be sold. The Letter of Complaint only says that they could expect to recoup "some, if not all, of their money", which to me does not suggest that they were told to expect a profit. And there is no evidence to support the allegation made in the Letter of Complaint regarding the "Russian Market" and a potential profit in 2020, nor is there any evidence to suggest that Mr and Mrs Q were interested in selling their timeshare at that time.

Given that Mr and Mrs Q were at the Supplier's resort on a holiday, I think they were interested in taking holidays, and specifically the type of holidays the Supplier could give them with the exclusive holiday rights they gained through the Purchase Agreement.

I can also see that the Supplier appears to have successfully terminated two existing timeshare agreements Mr and Mrs Q held with different timeshare providers – one of which was based in the United States. So, I think it's likely that they were also motivated to enter the Purchase Agreement in order to relinquish their existing timeshare products.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs Q'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 the purchase for the holidays it could provide them, and for the timeshare termination services the Supplier was offering, 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 Q and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

Conclusion

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 Q's claims under Section 75, and I am not persuaded that the Lender was party to a credit relationship with Mr and Mrs Q 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."

Responses to the PD

The Lender did not provide anything further for me to consider.

The PR replied on behalf of Mr and Mrs Q. It has provided commentary on each section of the PD. I don't think it's necessary to repeat most of these comments, but have summarised what I think are the key points below:

- The Fractional Club membership was misrepresented to Mr and Mrs Q by the Supplier as it promised them guaranteed rental income, a profitable resale and the termination of an old timeshare.
- The Supplier ceased trading, which means it has breached the contract with Mr and Mrs Q and there is no realistic expectation that the sale of the Allocated Property will happen.
- The credit relationship between Mr and Mrs Q and the Lender is unfair to them because the Supplier marketed the Fractional Club membership as an investment when it should not have done.

The PR then invited me to "*further examine the industry context, comparable legal cases, and any supplementary evidence as my be needed*".

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.

Having considered everything again, I still reject Mr and Mrs Q's complaint for the reasons I set out in the PD.

I will also deal with the matters raised by the PR in response. In doing so, I remind both parties that my role as an Ombudsman is not to respond to every point that has been made in response. Instead, it is to decide what is fair and reasonable in the circumstances of this specific complaint. So, while I have read the PR's response in full, my findings are confined to what I think are the most salient points.

As I explained in the PD, 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. And I've still not been given any testimony in Mr and Mrs Q's own words.

The PR says:

"The fact that [the PR] statement is in "template" form does not diminish its accuracy or evidential value, especially when direct testimony may be difficult to obtain years after the sale and with the Supplier's cessation."

But the PR did have the opportunity to take Mr and Mrs Q's testimony from them when it first began representing them. And as I said in the PD, the PR's Letter of Complaint is not evidence – and for that matter, neither is its response to the PD – so I simply cannot place much weight, if any, on what it's said.

The PR provided a table that sets out the misrepresentations, evidence and material impact on Mr and Mrs Q. But it has not presented any evidence – and I have not been shown anything that persuades me to depart from what I said in the PD about those allegations.

Likewise, the PR has not provided any new evidence to show that the Supplier breached the contract when it ceased trading. Mr and Mrs Q's contract sets out that the sale of the Allocated Property is to be carried out by a third-party trustee and not the Supplier, so I see no reason to depart from the conclusion I reached in the PD that there's no evidence of any breaches of contract by the Supplier.

I'm not persuaded by the PR's assertion that the relationship between Mr and Mrs Q and the Lender was rendered unfair to them for the same reasons I've given in the PD.

So overall, as the PR has not provided me with any new testimony or evidence from Mr and Mrs Q to support the allegations made about the events at the Time of Sale, and as I've not been persuaded by any of the PR's arguments in response to the PD, I see no reason to depart from my provisional findings, as outlined above.

My final decision

I don't uphold Mr and Mrs Q's complaint against Shawbrook Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Q and Mrs Q to accept or reject my decision before 25 August 2025.

Andrew Anderson
Ombudsman