DRN-4582981

The complaint

Mr and Mrs G have complained that Shawbrook Bank Limited ('Shawbrook') has unfairly declined a claim they made under section 75 of the Consumer Credit Act 1974 ('CCA').

What happened

Mr and Mrs G have made several purchases from a timeshare provider (the 'Supplier').

In June 2014, they exchanged 9,000 points they had of one type of timeshare membership for 9,000 points of another called 'Fractional Owners Club'. They had to pay £6,840 to exchange the points, and they borrowed the full sum from Shawbrook to pay it.

In May 2018, Mr and Mrs G – using a professional representative ('PR') – wrote to Shawbrook to make a claim under section 75 of the CCA (the 'Letter of Claim').

In November 2018, Shawbrook issued its final response letter. It rejected the complaint.

Mr and Mrs G's PR then referred the complaint to our service.

One of our investigators rejected the complaint on its merits.

Mr and Mrs G's PR has asked for a final decision from an ombudsman.

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.

When considering what is, in my opinion, fair and reasonable in all the circumstances of the case, I'm required by DISP 3.6.3 R of the Financial Conduct Authority ('FCA') Handbook to take into account:

> '(1) relevant:
>
> (a) law and regulations;
> (b) regulators' rules, guidance and standards;
> (c) codes of practice; and
>
> (2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time.'

Section 75 of the CCA protects consumers who buy goods and services on credit. It says, in certain circumstances, that the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier.

The Letter of Claim is very brief – it's essentially one eight-line paragraph. It says Mr and Mrs G have complained to the Supplier about the 'shoddiness' of the apartments on

several occasions, and they've struggled with availability. It notes that non-members can book holidays at the Supplier's resorts using a popular online travel agent, and it says Mr and Mrs G are left wondering 'why they have paid many thousands of pounds to stay in an "exclusive" resort when it is not exclusive in any way now'.

Regrettably, Mr and Mrs G's PR hasn't provided a witness statement from Mr and Mrs G – or anything else that sets out in their own words what happened at the time of sale, or what's happened since. I appreciate that the Letter of Claim was probably prepared by the PR following a conversation with Mr and Mrs G. However, a letter of claim is not evidence – especially when, as here, it contains bare allegations. In fact, the PR hasn't provided any evidence to support the allegations made in the Letter of Claim. And the Supplier says Mr and Mrs G haven't ever complained to it about the lack of availability or the quality of the apartments.

What's more, even if I were to accept that the accommodation was shoddy and that there was a lack of availability – and, again, I've seen no evidence of either – I've seen insufficient evidence to conclude that either would constitute a breach of contract. I appreciate that Mr and Mrs G's PR says they were 'badly misled' but it doesn't say how. To be clear, a 'misrepresentation' is a false statement of fact made by one party to another that induces them to enter a contract. The Letter of Claim implies that Mr and Mrs G were told the resort was 'exclusive' but it doesn't say so explicitly or provide any detail. The Supplier has confirmed that its resorts are not, and never have been, exclusive – and Mr and Mrs G have been members since 2001. In the circumstances, it's hard to believe they could have been misled about the exclusivity of the resorts.

All things considered, I don't think it was unfair for Shawbrook to decline Mr and Mrs G's claim under section 75 of the CCA.

After our investigator rejected the complaint and explained why, Mr and Mrs G's PR argued that the timeshare membership had been sold and/or marketed as an investment in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'). And it specifically referred to the High Court judgment in *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd* [2023] EWHC 1069 (Admin) ('*Shawbrook v Financial Ombudsman Service*'), which confirmed that a creditor-debtor relationship could be unfair under section 140A of the CCA if the timeshare membership was sold as an investment.

When our investigator explained to the PR that it hadn't complained about the fairness or otherwise of the creditor-debtor relationship under section 140A, or previously said anything about the membership being sold as an investment, it simply said: 'We want this case [put] forward to the ombudsman'.

For the avoidance of doubt, I can only consider a complaint if the consumers have already complained to the business and given them sufficient time to investigate it and issue a final response letter. As Mr and Mrs G haven't complained to Shawbrook about their creditor-debtor relationship, I can't consider or comment on the PR's submissions on this point. If Mr and Mrs G think the relationship is unfair for any reason, they should contact Shawbrook directly.

My final decision

For the reasons given, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 19 December 2025.

Christopher Reeves
Ombudsman