

The complaint

Mr D and Mrs J complaint is, in essence, that Shawbrook Bank Limited (“Shawbrook”) acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (“CCA”) and (2) deciding against paying a claim under s.75 CCA.

Background

Mr D and Mrs J were members of a timeshare provider’s timeshare membership scheme. In April 2015 (“Time of Sale 1”), they took out a new type of membership (“the 2015 Membership”) from a different timeshare provider (“the Supplier”). This membership entitled them to take holidays on a set week at a set apartment every year, but it also gave them an interest in a share in the net sale proceeds of that apartment (“the 2015 Allocated Property”) after their membership term ended after 15 years. They entered into an agreement with the Supplier to buy the 2015 Membership at a cost of €17,333 (“the 2015 Purchase Agreement”).

Mr D and Mrs J paid for their 2015 Membership by taking finance of £13,000 from Shawbrook (“the 2015 Credit Agreement”) in both of their names.

In April 2016 (“Time of Sale 2”), Mr D and Mrs J exchanged their 2015 Membership for a week at a different allocated property (“the 2016 Allocated Property”) and bought an additional week’s membership at a consecutive week at the 2016 Allocated Property (“the 2016 Membership”). They entered into an agreement (“the 2016 Purchase Agreement”) to purchase the 2016 Membership at a cost of €18,084, paying for it by taking a further loan from Shawbrook for £14,950 (“the 2016 Credit Agreement”). It appears that the two loans ran concurrently.

Mr D and Mrs J – using a professional representative (“PR”) – wrote to Shawbrook on 15 October 2019 (“the Letter of Complaint”) to raise a number of different concerns. In short, it was alleged that the Supplier misrepresented matters at Time of Sale 1 that Shawbrook was liable to answer under s.75 CCA, in that:

1. The 2015 Membership was an investment product that could be resold at any time and guaranteed a return on their initial investment with a profit at the latest in 2030.
2. The Supplier would ‘get them out’ of their existing timeshare and it would be impossible to do so without the Supplier’s help.
3. There was a guaranteed rental programme for their timeshare week, which would provide them with the funds to pay the annual management fees due plus a profit.

With respect to the 2016 sale, it was alleged that:

1. Buying two consecutive weeks was easier to rent out.
2. Two weeks would realise a higher amount when they came to be sold.¹

¹ Given that Shawbrook only funded the 2015 Purchase Agreement, it is not clear to me that it could be responsible to answer all of the allegations surrounding the second membership that was granted

Shawbrook dealt with Mr D and Mrs J's concerns as a complaint and issued its final response letter on 13 November 2019, rejecting it on every ground.

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

Mr D and Mrs J disagreed with the Investigator's assessment and asked for an Ombudsman's decision. But before that happened, PR sent Shawbrook a further complaint on 19 February 2024 alleging that both of the sales were presented by the Supplier as investments, which was in breach of Reg.14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ("the Timeshare Regulations"), leading to an unfair credit relationship as defined by s.140A CCA.

A second Investigator looked at the complaint again in light of the new matters raised, but again rejected the complaint on its merits. In doing so, they noted that there was no direct evidence from Mr D and Mrs J, which meant it was very difficult to know exactly what happened at the Times of Sale. PR responded to say that the Letter of Complaint had been written based on their instructions and should therefore be treated as their evidence. The complaint has now been passed to me for a final decision.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context here.

My findings

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

Having done that, I do not think this complaint should be upheld. However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

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

The CCA introduced a regime of connected lender liability under s.75 CCA 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 exchange for the 2015 Membership. However, for the purposes of this decision, I am treating both of the memberships obtained in 2016 as one and the same.

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. Shawbrook does not dispute that the relevant conditions are met. But for reasons I will come on to below, it is not necessary to make any formal findings on them here.

I have set out above the alleged misrepresentations that PR says the Supplier made to Mr D and Mrs J. In addition to what was said above, PR points to the following as evidence that the representations were made:

- Following the 2015 sale, Mr D and Mrs J were given a cheque for €800 and they were given a similar cheque for €1,815 following the second sale. PR says this was an advance of the expected rental income.
- Mr D and Mrs J were told that they could resell the 2015 Membership through the Supplier once its resale department was opened, but this never happened and the Supplier has ceased trading so it will not happen.
- Mr D and Mrs J relinquished their earlier timeshare only after paying £2,000 to do so to the first timeshare provider. But the Supplier said that it would be responsible for the cost of relinquishment.
- Mr D and Mrs J rented out one week at £700.
- Section 9.2.2 of the Supplier's Rules made clear that it would not "*give any form of guarantee, representation of warranty as to the ultimate sales price of the properties*", but this went against the verbal guarantee that was given.

In our two Investigators' views, they said that without direct evidence from Mr D and Mrs J, they were unable conclude that the timeshare was represented in the way alleged or sold as an investment. In response, PR said that the original Letter of Complaint set out the factual information provided by Mr D and Mrs J and was a direct account from them. PR said that this was evidence that ought to be considered.

The Financial Ombudsman Service does not have the same strict rules of evidence that a Court would, so there is no set form by which we have to receive evidence and therefore I have taken into account what PR has said on behalf of Mr D and Mrs J. However, it is difficult to know precisely what it was that they allege they were told, given that the Letter of Complaint and subsequent correspondence is written in the form of argument rather than first-hand evidence or memories of what happened during the sale. So I have considered what has been said alongside the other available evidence in this complaint.

I will deal with each alleged misrepresentation in turn.

It has been alleged with each sale that the Supplier told Mr D and Mrs J that the Memberships were investments. With the 2015 sale, PR says they were told the 2015 Membership could be resold at any time and guaranteed a return on their initial investment with a profit at the latest in 2030. With the 2016 sale, it was said that they were told the returns would be higher than with the earlier membership.

However, PR later said that Mr D and Mrs J were told that they could resell their 2015 membership through the Supplier once its resale department was opened, but this never happened. That does not fit with the original allegation that they were told they would be able to sell the 2015 Membership at any time. PR also accepts that there was a contractual term (Rule 9.2.2 as set out above) where the Supplier said it gave no guarantee of the sale proceeds.

Further, I have also seen the Purchase Agreements and in both, it is written (in a section titled Additional Information):

"It is not possible to join a resale system within this Club. There are third party resale companies which may undertake this service (for a fee) on Your behalf. The Vendor makes no recommendation as to the efficacy of any particular resale company or on the charges which they may levy".

Finally, I have also seen that Mr D and Mrs J also signed a one-page 'Declaration of Treating Customers Fairly Sales Practice' form with each sale. On both occasions the form said:

"5. I/We [Mr D and Mrs J] have not entered into this purchase purely for a wider investment opportunity or financial gain".

On balance, I simply do not have the evidence required for me to say that the Supplier sold either Membership as an investment or, in fact, what representations were made during either sale. The allegations contained within the Letter of Complaint are not specific enough for me to know what it was that Mr D and Mrs J say they were told about the Memberships and they are contradicted by both PR's subsequent arguments and the contractual documentation and declaration that they signed at the Times of Sale. I accept that the passage from the *Declaration of Treating Customers Fairly Sales Practice* form does not exclude the possibility that Memberships were positioned as investments, however this is denied by the Supplier. Without some explanation of what Mr D and Mrs J understood by this (and the other documentation they signed), I am unable to make a finding about what they were or were not told by the Supplier during either of the two sales.

Similarly, I am unable to say what Mr D and Mrs J were told about the Supplier relinquishing their earlier membership. There is nothing in the contractual documentation about what the Supplier said it would do. In response to the complaint, the Supplier has proved Shawbrook with its version of events. It said:

"Also agreed in the purchase was to relinquish them from previous ownership which was successfully completed September 2015. The reason for the delay was due to the fact the clients were in arrears with maintenance payments hence the clients having to pay [the previous timeshare provider] £2000 BUT [the Supplier] state very clearly that all previous ownerships have to be clear from any outstanding debts in order for them to proceed."

So I accept there was some sort of agreement that the Supplier would undertake a relinquishment service of some kind, but I cannot say that Mr D and Mrs J were told that it was guaranteed, that this was the only way they could get out of their earlier membership or that it would cover the cost of doing so. Again, I do not find there was any untrue representation made about this. Further, I am unable to say on what terms the Supplier agreed to act for Mr D and Mrs J, so I cannot say it did not do something that it had agreed to do.

Turning to the allegation that there was a rental programme offered. PR says that Mr D and Mrs J were told that there was a guaranteed rental programme for their timeshare weeks, which would provide them with the funds to pay the annual management fees due plus a profit. It also said that they were given cheques as an advance payment for the rental income. I have seen copies of the two cheques that were provided by the Supplier, so I am satisfied they were provided.

However, PR also said in a letter to Shawbrook on 15 November 2019:

“...The money received back from [the Supplier] as a cheque was not for the sale of Timeshare but to help the clients pay the first six months payments to yourselves This was not done out of the goodness of their hearts but, instead, was loaded onto the price they were charged...”

So it is not clear what is being alleged about the cheque payments – were they advances on the rental income or to help cover some of the loan payments. Again, without further explanation from Mr D and Mrs J, I am unable to make a finding on what they understood was the purpose of these cheques.

I have looked at the paperwork provided by the Supplier and I cannot see any reference to a rental scheme (something that the Supplier has said it did not offer). And I note again that there was a disclaimer that went to say Membership was not to be seen purely as an investment opportunity or a way to make a financial gain, which does not fit with what Mr D and Mrs J say they were told. So, on balance, I do not find that the Supplier misrepresented to them the rental opportunities that the Memberships gave them.

So, while I recognise that Mr D and Mrs J - and the PR - have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under s.74 CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I have set out above, I am not persuaded that there was. And that means that I do not think that Shawbrook acted unreasonably or unfairly when it dealt with this particular s.75 claim.

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

As noted above, Shawbrook could also be jointly liable to answer any of the Supplier's breaches of the Purchase Agreements. I have already explained that I am unable to say what was agreed about the Supplier undertaking the relinquishment of their earlier timeshare, but I can see that this was achieved and I cannot say that the Supplier breached any agreement when doing so.

It has been said during the course of this complaint that the Supplier has ceased trading, so if Mr D and Mrs J were no longer able to receive something they were entitled to under their Purchase Agreements, that could amount to a breach of contract. In response, the Supplier has said that it has closed its sales offices, but it continued to provide operational services.

Mr D and Mrs J say that the Supplier said it would open a resale department, but this did not happen. However, the Supplier denies this was the case and I cannot see there being any express or implied contractual term that such a service was or would be made available. So I cannot say there was a breach of contract for this reason.

Further, it has not been said, suggested or evidence provided to demonstrate that they are no longer:

1. a member of the 2016 Membership;
2. able to use their 2016 Membership to holiday in the same way they could initially; and
3. entitled to a share in the net sales proceeds of the relevant Allocated Property when their 2016 Membership ends.

So, from the evidence I have seen, I do not think Shawbrook is liable to pay Mr D and Mrs J any compensation for a breach of contract by the Supplier. And with that being the case, I do not think Shawbrook acted unfairly or unreasonably in relation to this aspect of the complaint either.

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

I have already explained why I am not persuaded that the Memberships were actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with S.140A CCA in mind if I am to consider this complaint in full – which is what I have done next.

Having considered the entirety of the credit relationship between Mr D and Mrs J and Shawbrook along with all of the circumstances of the complaint, I do not think the credit relationship between them was likely to have been rendered unfair for the purposes of s.140A CCA. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. The provision of information provided by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;
2. The commission arrangements between Shawbrook and the Supplier at the Time of Sale and the disclosure of those arrangements;
3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
4. The inherent probabilities of the sale given its circumstances; and, when relevant
5. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationship between Mr D and Mrs J and Shawbrook.

The Supplier's sales & marketing practices at the Time of Sale

Mr D and Mrs J's complaint about Shawbrook being party to an unfair credit relationship was made for the reason that the sale breached Reg.14(3) of the Timeshare Regulations, meaning that the Memberships were marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

Shawbrook does not dispute, and I am satisfied, that Mr D and Mrs J's Memberships met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Reg.14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club 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 PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mr D and Mrs J were told by the Supplier that both Memberships were the type of investment that would only increase in value.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this decision, and 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.

A share in the Allocated Properties clearly constituted an investment as it offered Mr D and Mrs J the prospect of a financial return – whether or not, like all investments, that was more than what they first put into them. But it is important to note at this stage that the fact that the

Memberships included an investment element did not, itself, transgress the prohibition in Reg.14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It does not 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 Memberships. They just regulated how such products were marketed and sold.

To conclude, therefore, that the Memberships were marketed or sold to Mr D and Mrs J as an investment in breach of Reg.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 the Memberships offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

I have carefully considered what PR has said about this issue, both in the original Letter of Complaint, subsequent correspondence with Shawbrook and a detailed response to our Investigator's view in August 2025. I have also considered the Supplier's denials that it ever sold the Memberships in the way alleged and the sales paperwork that includes the disclaimer I set out above.

I have thought about PR's arguments that they have lots of other clients who have made similar complaints, meaning there is evidence that the Supplier systemically breached Reg.14(3). However, for me to conclude that the Supplier did breach Reg.14(3) in this particular complaint, I would need to be satisfied that there was evidence that went to the central issue in hand. So although I accept that PR has made complaints on behalf of others, that does not mean I must conclude the Supplier sold or marketed Memberships to Mr D and Mrs J as investments.

I have also considered that, given the nature of the Memberships being associated with the Allocated Properties, there was a real risk that the Supplier could have breached Reg.14(3) at the Times of Sale – it seems to me more likely that a supplier could breach that regulation selling a product with an investment element, rather than a product without it. However, that in and of itself is not sufficient for me to conclude something has gone wrong.

As noted above, the Financial Ombudsman Service does not require evidence to be presented in a specific way or format. However, I simply do not have any direct evidence from Mr D and Mrs J about what the Supplier told them during the two sales in question that made them think the Memberships were being presented as investments. And despite this being made clear to PR in two Investigator's views, no further evidence has been provided. So having considered everything, I do not find it more likely than not that the Supplier breached Reg.14(3) during either of the two sales. And for that reason, I do not think the credit relationships between Mr D and Mrs J and Shawbrook was unfair to them.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that Shawbrook acted unfairly or unreasonably when it dealt with Mr D and Mrs J's s.75 CCA claim, and I am not persuaded that Shawbrook was party to a credit relationship with them under the Credit Agreements that was unfair to them for the purposes of s.140A CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct Shawbrook to compensate them.

My final decision

I do not uphold Mr D and Mrs J's complaint against Shawbrook Bank Limited.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr D and Mrs J to accept or reject my decision before 17 March 2026.

Mark Hutchings
Ombudsman