

The complaint

Mr and Mrs F'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 F made the following purchases from a timeshare provider (the 'Supplier'):

Time of Sale	Number of points	Price	Payment method
April 2016 ¹	0 (trial membership)	£3,350	Financed by the Lender
16 November 2016	5,000	£5,000	Financed by the Lender
27 February 2018	5,000	£7,500 ²	Financed by the Lender
15 January 2019	5,000	£7,500	Financed by the Lender

According to the Lender, Mr and Mrs F also attended sales presentations in November 2018 and February 2019 and agreed to purchase 7,500 points each time, but they cancelled these two agreements within the cooling-off periods.

Mr and Mrs F – using a professional representative (the 'PR') – wrote to the Lender on 12 November 2019 (the 'First Letter of Complaint') to complain about the events that happened at the Time of Sales, referring to Sections 75 and 75A of the CCA. The PR says:

"Our clients were existing members with [the Supplier]. Initially our clients were happy with the [Supplier] system but the maintenance fees were ever increasing and there was a serious lack of availability for when and where they wanted to holiday. Another problem was that the ownership was in perpetuity and as their family did not want to take the ownership over, they were concerned about being able to resell as the only way to sell a [Supplier] ownership is to another [Supplier] member, and as most members are trying to get out, this is virtually impossible.

Our clients also discovered that [Supplier] resorts were available on the internet, via an online travel agent, for a much lesser cost than they were paying in maintenance fees. This meant that nobody wanted to be locked into a contract when they could book the same holiday online for less.

Our clients approached [the Supplier] regarding this matter when they were on holiday at a [Supplier] resort in February 2018. They were informed by a [Supplier] representative that the only way to get out of the situation was to buy further points as the higher the points value the more chance they would have of achieving a resale and recouping the money they had invested. Our clients reluctantly invested a further £14,006.42, financed by a Shawbrook

¹ The First Letter of Complaint says that Mr and Mrs F were happy with the Supplier's system at first, and it only covers matters that took place during the subsequent sales, so I am satisfied that their complaint does not concern the trial membership.

² The total amount loaned by the Lender to Mr and Mrs F was £14,006.42, which included the consolidation of the previous loan balance.

Bank Ltd finance agreement. This purchase was based purely on the representatives' assurances that the points would now sell.

Needless to say they still could not resell the points, the availability situation was worse than ever and the maintenance fees were increasing every year.

They returned to a [Supplier] resort in January 2019 and again queried the fact that they could not sell any of their points. At this stage our clients were desperate to find a solution. The [Supplier] representative explained that as the new [Supplier] "European Collection" Resorts had been released the only solution was to upgrade yet again at a further cost of £7,500. This purchase agreement was arranged on the day with yet another Shawbrook Bank Ltd finance agreement".

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

The PR followed this up with another letter to the Lender, arguing that Mr and Mrs F were subject to "pressure selling".

Mr and Mrs F 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.

In a letter to the Lender on 23 January 2024 (the 'Second Letter of Complaint'), the PR raised further concerns under Section 140A of the CCA about things that it says rendered the credit agreement between Mr and Mrs F and the Lender unfair.

On 23 June 2025, I issued a provisional decision (the 'PD'), rejecting Mr and Mrs F's complaint. I started by setting out the legal and regulatory context and what I considered to be good industry practice:

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 set out my 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 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.

I would also like to set out my thoughts on the witness statement provided during the course of this complaint, as well as the contents of the First and Second Letter of Complaint.

I appreciate that the First Letter of Complaint was probably prepared by the PR following a conversation with Mr and Mrs F. After all, it contains personal information that only they 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.

The Second Letter of Complaint does not contain any personal information. It seems to refer to a single loan and sales meeting, but Mr and Mrs F took out a total of four loans with the Lender. And it refers to an upgrade from a points-based membership to a product called Fractional Ownership, which is not something that Mr and Mrs F's paperwork shows ever happened. So, I struggle to accept that Mr and Mrs F had any input into its contents at all.

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 – I see little reference to anything which could reflect what is said to have happened any of the Times of Sale. 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.

With all this considered, I'm unable to place much evidentiary weight on the First Letter of Complaint and I'm unable to place any weight on the Second Letter of Complaint at all. So, I have relied 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 F 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 F at the Time of Sale, the Lender is also liable.

This part of the complaint was made by the PR exactly as I set out at the start of this decision. While I recognise that Mr and Mrs F 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. That is because there simply isn't the evidence to support what has been alleged.

For example, Mr and Mrs F haven't provided me with any evidence to support their allegation that they had difficulty using their membership to book holidays. The Supplier has given me a list of the reservations they made using their memberships, showing that they made a total of 11 bookings across seven different locations between March 2017 and November 2019. I appreciate Mr and Mrs F may not have always been able to secure their first choice of dates or locations, but I'm not persuaded the Supplier would have told them they were guaranteed availability at any time or any location.

There is also no evidence to support the allegation that Mr and Mrs F were told that they could sell their points more easily if they bought more points. They've provided no evidence that they ever tried to sell their points. And I've seen the paperwork, signed by Mr and Mrs F, showing that the Supplier had a policy that allowed its customers to surrender their memberships without incurring any costs once one or more member turned 75 years of age, which in Mr F's case happened in 2020. Given this, I think it's unlikely the Supplier would say that they needed to upgrade to buy more points in order to exit the membership.

The First Letter of Complaint also says that the Supplier denies selling the timeshare as an investment. But there is no allegation that it sold the memberships in this way. There is a disclaimer in the document titled "Customer Compliance Statement/Declaration to Treating Customers Fairly", that says the points should not be seen as a financial or property investment, and Mr and Mrs F have ticked a box next to this statement, indicating that they have read and understood it. So, there is no evidence that the points were sold as an investment, and I find it unlikely that they were sold in that way, given the disclaimers in the contemporaneous paperwork.

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 F 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 F 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 F 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 any of the contracts, the Lender is also liable.

The PR says in the Letter of Complaint that the Supplier has terminated the contracts of its European sales staff. The PR has also referred to Section 75A of the Consumer Credit Act. By this, I understand the PR is alleging that there was a breach of one or more of the contracts 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. As Mr and Mrs F's memberships were all valued at less than that amount, I think the PR has made an error here. The relevant provision is s.75 of the CCA, and I have considered if there has been a breach of contract with this in mind.

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. I think this because Mr and Mrs F haven't provided any evidence to show that they were unable to use their points. And their reservation history shows that they made regular bookings. I accept that they may not have been able to take certain holidays, but I have not seen enough to persuade me that the Supplier had breached the terms of any of the contracts.

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

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 its Second Letter of Complaint, says that the Supplier did exactly that at the Times of Sale, and that this caused the relationship between Mr and Mrs F and the Lender to be rendered unfair for the purposes of Section 140A of the CCA. So, for completeness, that is what I have considered here.

On my reading of the information provided to me by both parties, I'm not persuaded that was what is more likely than not to have happened at any of the Times of Sale. I say this because, as I've said before, there is simply no evidence about what happened at the Times of Sale which supports this allegation. The PR sets out in the Second Letter of Complaint that Mr and Mrs F were sold a Fractional Ownership product, but the PR is mistaken as the sales all involved points-based memberships that did not include an investment element.

The PR says that Mr and Mrs F were pressured by the Supplier into purchasing their points at the Times of Sale. I acknowledge that they may have felt weary after a sales process that went on for a long time. But I haven't been given any evidence about what was said and/or done by the Supplier during the sales presentations that made them feel as if they had no choice but to purchase the memberships when they simply did not want to. They were also given a 14-day cooling off period and they haven't provided any explanation for why they didn't cancel their membership during that time. And they did cancel two other purchases within the cooling-off periods given to them, so clearly they knew that they didn't have to go ahead with the purchases if they chose to cancel them. And with all of that being the case, there is no evidence to demonstrate that Mr and Mrs F made the decisions to purchase their memberships because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

On balance, therefore, I am not persuaded that Mr and Mrs F were sold any of their memberships at the Times of Sale as a way to make a financial gain (i.e., a profit) because there's no evidence that the Supplier sold their points-based memberships in that way. And for that reason, I do not think the credit relationships between Mr and Mrs F and the Lender 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.

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 F's claims under Section 75 and Section 75A, and I am not persuaded that the Lender was party to a credit relationship with Mr and Mrs F 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 Provisional Decision

The Lender confirmed it had received the PD and had nothing further to add.

Mr and Mrs F, through the PR, provided me with their testimony about their interactions with the Supplier. In summary, they say:

- The Supplier's sales agents convinced them to buy its points to give them better options for holidays.
- They were "given to believe this would be a good investment".
- Each time they attended a sales meeting, they were told that they would achieve better availability and accommodation if they bought more points.
- They were told about a "late availability" scheme which gave them discounts on the number of points needed to take holidays, which was something that appealed to them.

- This didn't work as none of the holidays they wanted were available.
- The management fees increased considerably, and this wasn't explained to them.
- When they surrendered their points, they thought they would receive some reimbursement, but this didn't happen.
- Instead of being an investment, it turned out that they could have bought similar holidays through travel agents for less money and without the ongoing commitments.

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.

Following the responses to the PD from both parties, I've considered Mr and Mrs F's complaint again and I have reached the same decision as that which I outlined in the PD, for broadly the same reasons.

To reiterate, my role as an Ombudsman is not to address every single point that has been raised to date, but to decide what's fair and reasonable in the circumstances of this complaint. So, if I haven't commented on something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused on what I think are the key issues in deciding this complaint and explaining the reasoning behind my final decision.

I've considered Mr and Mrs F's comments on their interactions with the Supplier and have thought afresh about whether I think the Lender ought to have acted differently than it has done.

Mr and Mrs F are clearly unhappy with the holidays they received through their memberships, but I've not seen anything to persuade me that the Supplier misrepresented any of these purchases to them, or that it breached any of the contracts. I say that because, while Mr and Mrs F may not have always been able to receive the exact holidays they desired at the times and locations that best suited them, they haven't said anything to persuade me that they were told something by the Supplier that turned out to be untrue. And the paperwork from the sales makes it clear that holidays would be subject to availability.

I've thought about Mr and Mrs F's comments about the "late availability scheme". I've read the document titled "Customer Compliance Statement/Declaration to Treating Customers Fairly", which says the following:

"We are aware that if we book a week's accommodation less than 59 days of the arrival date, the Points required to make that reservation will be reduced by 50%... We are also aware that Point saver benefit availability will be limited at certain times of the year."

Mr and Mrs F have ticked a box next to this statement, which indicates that they read and understood that the holidays they could receive through that scheme would be limited in availability. Although the scheme may have been of interest to Mr and Mrs F, they were not limited to only taking holidays at short notice and could have used their points to book their desired holidays further in advance. And as I said in the PD, Mr and Mrs F used their memberships to take 11 different holidays across seven locations between March 2017 and November 2019, so I think they were able to use the memberships to take holidays, even if those locations and dates were not their first choice.

Regarding the annual management charges, the paperwork provided by the Supplier at the Time of Sale clearly states that Mr and Mrs F would be required to pay a fee which was calculated by the number of points they owned, in addition to an annual membership fee. Mr and Mrs F ticked a box next to this statement to show that they read and understood how the fees were to be calculated. So, I think they were made aware that the fees increased alongside their points allocation.

Mr and Mrs F say they were told the points were an investment. But they haven't elaborated on what they were told to make them think that they were purchasing a product that they could expect to increase in value and/or provide them with a profit. They have also ticked a box next to a statement in the contemporaneous paperwork that reads:

"We understand that the purchase of our Points is an investment in our future holidays, but that it should not be regarded as a property or financial investment and that any subsequent resale will depend on market conditions."

Lastly, I've not been told why Mr and Mrs F were under the impression that they would receive a reimbursement of some monies when they surrendered their membership, or whether this was something they were told by the Supplier at the Times of Sale. So, there is insufficient evidence for me to conclude that they were led to believe they would see a return of some monies they paid the Supplier.

Conclusion

Having considered everything provided to me by both parties, I don't think the Lender acted unreasonably when it dealt with Mr and Mrs F's claims under Section 75 of the CCA and I'm not persuaded that it was a party to an unfair relationship with them under Section 140A of the CCA.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr F to accept or reject my decision before 6 August 2025.

Andrew Anderson
Ombudsman