DRN-4643125

The complaint

Mrs D and Mr D complain Shawbrook Bank Limited ("Shawbrook") provided finance for timeshares that were mis-sold to them, and has refused to take responsibility for this mis-selling.

Mrs D and Mr D are represented in their complaint by a professional representative ("PR").

What happened

Mrs D and Mr D were members of a particular timeshare scheme and, while on holiday at the resort in April 2014, they were introduced to a timeshare provider operating out of the same location (the "Supplier").

Mrs D and Mr D entered an agreement with the Supplier to purchase a different kind of timeshare at the resort, a "fractional" timeshare. This entitled them to holiday every year in weeks 13 and 31 in apartment 415, but also came with a right to a share in the net sale proceeds of the apartment (the "Allocated Property"), when the timeshare scheme was due to come to an end in 2030.

Mrs D and Mr D purchased these fractional timeshare weeks for a total of 24,000 euros. They also traded in their existing timeshare at the resort. A loan with Shawbrook was arranged for £21,000 to cover the purchase price, repayable over 120 months at £302.44 per month.

On return to the resort in November 2014, Mrs D and Mr D made another purchase from the Supplier, adding week 30 to their fractional timeshare holdings, in the same apartment. This week cost an additional 10,365 euros, financed by another loan from Shawbrook, this time of £8,500, repayable over 120 months at £123.82 per month. Mrs D and Mr D repaid both loans early.

In the meantime, in July 2019, Mrs D and Mr D complained to Shawbrook. PR, on their behalf, indicated they were raising a claim under the principles of connected lender liability, on the grounds that the Supplier had made various misrepresentations to Mrs D and Mr D, and had broken promises made when it had sold them the timeshares. Specifically:

- They had been told that, in 2020, their timeshare weeks would be sold and they would get their money back plus a profit.
- The Supplier had said that they could sell their timeshare weeks earlier, from 2020, to the Russian market, and they could make a profit in that way.
- They could rent out their weeks if they weren't using them, making at least 1,000 euros per week. While they had in fact been able to rent out their weeks on some occasions, it had not been for the amounts expected.
- On one occasion in 2017 they had been told one of their weeks hadn't been rented but, after making enquiries with the hotel reception, they'd been informed there was

someone staying in the apartment. They had never received any rental income for that week.

Shawbrook rejected the complaint, which was then referred to this service for an independent assessment.

One of our Investigators looked into the matter. She didn't conclude that the complaint ought to be upheld, noting that the allegations made hadn't been supported by sufficient evidence.

A week later, on 19 February 2024, PR wrote to our Investigator asking to appeal against her assessment. At this point PR added that Shawbrook had participated in an unfair credit relationship with Mrs D and Mr D, within the meaning of Section 140A of the CCA. PR added the following matters to the complaint at this point:

- Mrs D and Mr D had been sold an unsuitable investment opportunity. It was not feasible that the Allocated Property could be sold at a profit in 2030, given the state of property prices and how much the various weeks had been sold for. The promised returns had not materialised.

- In any event, the Allocated Property would not now be sold, because the Supplier had gone out of business and the resort was sold to a hotel chain which had said it would not be honouring the agreement to sell in 2030.

- It had never been explained to Mrs D and Mr D that, if they defaulted on their loan payments, their weeks would be confiscated.

- It was clear that Mrs D and Mr D had bought the fractional weeks because they were for a shorter term than their previous timeshare, and the prospect of it being a profitable investment. It was illegal for timeshares to be sold as investments under Regulation 14(3) of the Timeshare, Holidays Products Resales and Exchange Contracts Regulations 2010 (the "Timeshare Regulations").

Sometime later, a new Investigator took over the case. She sent an assessment of her own which considered Shawbrook's potential responsibility for an unfair credit relationship, but she didn't think the complaint should be upheld either. One thing our Investigator focused on was the lack of any first-hand testimony from Mrs D and Mr D. She considered that, without this, it was difficult to determine which parts of PR's submissions reflected their recollections, and which were generic in nature.

Shawbrook accepted our second Investigator's assessment. PR did not. I could fairly summarise its objections as follows:

- There was nothing wrong in accepting PR's summary of what had happened as set out in its letter of complaint, given this had been based on conversations with Mrs D and Mr D. Nevertheless, Mrs D and Mr D were willing and able to provide a detailed statement of their recollections if we required one.

- The complaint was similar to many others that had been successful.

- While the paperwork associated with the purchases may not have characterised the timeshares as investments, oral representations were made to this effect, which should not be discounted.

- It shouldn't be up to Mrs D or Mr D to obtain proof that the timeshare weeks wouldn't be sold in 2030, or that they couldn't use them, as a result of the Supplier's closure.

That was the job of the Financial Ombudsman Service.

- Shawbrook had failed to conduct due diligence with respect to the Supplier.

Our Investigator said she would pass the complaint to an Ombudsman to review. PR then made further submissions which reiterated many points it had made previously, but also emphasised that Mrs D and Mr D were willing to provide a detailed personal statement. PR asked if the Financial Ombudsman Service would be requesting such a statement.

The case has now been passed to me to decide.

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 done so, I've concluded that it shouldn't be upheld. However, I also 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.

Before going to analyse the specifics of the complaint in detail, I think it would be useful to set out how it is that Shawbrook could potentially be required to provide redress to Mrs D and Mr D based on their complaint about what the Supplier did (or didn't do). The two main avenues via which they could seek redress are through a claim under Section 75 of the CCA, or through a complaint that Shawbrook participated in an unfair credit relationship with them under Section 140A of the CCA.

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 Shawbrook under Section 75 essentially mirrors the claim Mrs D and Mr D 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. Shawbrook 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 Mrs D and Mr D, or having been in breach of contract, Shawbrook is also liable.

The application of Section 140A is more complicated. Insofar as is relevant to this case, it means that the debtor-creditor relationship between Mrs D and Mr D and Shawbrook can be found to have been unfair because of anything done (or not done) by, or on behalf, of Shawbrook, before the making of the credit agreements. An unfair debtor-creditor relationship can also be based on the terms of a related agreement (such as the purchase agreements for the timeshare weeks) and, when combined with section 56 of the CCA, on anything done or not done by the Supplier on Shawbrook's behalf before the making of the credit agreements or any related agreement. Section 56 has the effect of making the Supplier Shawbrook's agent for the purposes of the negotiations leading up to both purchases.

However, just because the Supplier may have done something wrong and breached a legal or equitable duty, doesn't necessarily mean that the relationship between Mrs D and Mr D, and Shawbrook, will have been rendered unfair. It's important to consider all of the relevant facts before concluding that this is, or was, the case.

I'll first be considering whether or not Mrs D and Mr D had a valid claim against Shawbrook under Section 75 of the CCA. But before, even, I do that, I think it's important to tackle a very important issue which our second Investigator focused on in her assessment – that of the lack of any direct testimony from Mrs D and Mr D.

The significance of the lack of direct testimony

This is, for the most part, a complaint about things that happened a long time ago. In particular, it is about things that were alleged to have been said, rather than written down. When our Investigators made their assessments of the complaint, the events in question had taken place around ten years ago or more. And at the time PR first wrote to Shawbrook about the complaint, around five years had passed since those events.

It appears that no direct testimony (for example, a witness statement) was supplied to Shawbrook. Nor has any direct testimony been supplied to the Financial Ombudsman Service from January 2020 when PR first wrote to us about the case, to date. PR has suggested that its original letter of complaint was based on conversations with Mrs D and Mr D and should be treated as first-hand testimony, but I don't think the letter of complaint is a proper substitute for hearing from Mrs D and Mr D in their own words.[1] The letter is essentially a series of bare assertions not supported by evidence from Mrs D, Mr D or other contemporaneous sources.

As far as I can see, PR first offered to provide direct testimony from Mrs D and Mr D in August 2025. This was after two Investigators had issued unfavourable assessments, and after the judgment in *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*") was handed down.

[1] It is also my understanding that, to some extent, the original letter of complaint is a "composite" based on conversations with multiple complainants. If that is the case, then it is difficult to know what aspects, if any, are based on Mrs D and Mr D's individual circumstances, reducing its value as evidence of what happened when the timeshares were sold.

Experience tells me that, the more time that passes between a complaint and the events complained about, the more risk there is of recollections being vague, inaccurate and/or influenced by discussion with others. In light of this, I think there is a very real risk that any direct testimony produced by PR now would be coloured by the judgment in *Shawbrook & BPF v FOS*. Had such testimony been produced now (which it hasn't) then there would be very little weight that I could attach to it.

I'm aware that PR has expressed dissatisfaction at not being asked specifically to provide direct testimony from Mrs D and Mr D to support the case, as part of our investigation.

I think it's clear that, where the outcome of a complaint is likely to turn on what may or may not have been said verbally, then the individual recollections of the complainant(s) of the relevant conversations are going to be very important evidence. It is the responsibility of a professional representative to put forward its clients' strongest case, and I would expect such a representative to be aware that the individual recollections of its clients were likely to be important evidence that it ought to provide in a case like this.

So, while I'm aware PR has said that Mrs D and Mr D would be willing to provide a witness statement now, I do not think this would assist their case at this stage due to the lack of weight I would be able to attach to it as evidence of what happened at the relevant time. Any such evidence ought to have been produced at a much earlier point.

Mrs D and Mr D's Section 75 claim for misrepresentation

For the purposes of this case, a misrepresentation would be a false statement of fact made by the Supplier to Mrs D and Mr D, and which they relied on when deciding to make either of their purchases.

In this case, it's been alleged by PR that the Supplier told Mrs D and Mr D that the timeshares were investments which would be sold in 2030, making them a profit, that they could sell their timeshares on the Russian market from 2020 for a profit, and that they could rent out their weeks for in excess of 1,000 euros per week. While PR's submissions have not been especially clear, I understand it to be alleging that none of these statements was true.

As I've discussed above, there is no first-hand evidence from Mrs D or Mr D in this case of what the Supplier said prior to them purchasing their timeshare weeks.

In light of this, it's very difficult for me to conclude that (in the absence of documentary evidence to support it) the Supplier made any of the false statements alleged. I've considered the available paperwork completed for both purchases, and have been able to find no references to renting out of the weeks, of the weeks being sold for a profit in 2030, or the ability to sell them from 2020 to the Russian market at a profit.

Ultimately, I think there's insufficient persuasive evidence that the alleged false statements were made. So Shawbrook did not act unfairly or unreasonably in declining to honour Section 75 claims from Mrs D and Mr D on the basis of misrepresentation by the Supplier.

Section 75 – the Supplier's alleged breaches of contract

PR says that the Supplier has ceased trading, and that this means that Mrs D and Mr D can no longer use their weeks. PR also says that the hotel chain which now owns the resort has said it won't honour the sale of the Allocated Property in 2030.

Shawbrook, when responding to the complaint, was of the view that Mrs D and Mr D could still make bookings. And my understanding, having read the paperwork associated with the purchases, is that the Allocated Property is held in trust by a trustee company. In my experience, this kind of arrangement is intended to protect the rights of timeshare owners in case of things like the insolvency of a timeshare provider. I don't know what the specific situation is in Mrs D and Mr D's case. No evidence has been provided of them being told they can no longer use their weeks due to the Supplier ceasing to trade, nor has any evidence been provided of the hotel chain stating that sales in 2030 will not be honoured.

PR has suggested that it's the Financial Ombudsman Service's responsibility to prove the allegations it has made in this regard. While we can carry out a reasonable degree of investigation, it is generally for a complainant to supply evidence to support the complaint they are making. And I would say that Mrs D and Mr D, via PR, are in a far better position to provide evidence of (for example) being unable to use their timeshare, than the Financial Ombudsman Service.

So there is insufficient evidence to conclude the Supplier is in breach of contract in relation to the ongoing use of the timeshare weeks, or the future sale in 2030. If, in 2030, the contractual terms surrounding the sale of the Allocated Property are not honoured, then Mrs D and Mr D may have a claim at that point in time.

Another point referred to by PR was a failure by the Supplier to pay Mrs D and Mr D rental income when one of their weeks was rented in 2017. When responding to the complaint in 2019, Shawbrook said it had asked the Supplier to look into this, and that the Supplier would respond separately. No party to the complaint has made any further mention of this issue, so I assume it has been resolved. But if I'm wrong about that, I'd again observe that there's insufficient persuasive evidence to show that the week in question was rented or that Mrs D and Mr D failed to receive any payment they were contractually entitled to.

Overall, I don't think Shawbrook acted unfairly or unreasonably by declining to honour Section 75 claims from Mrs D and Mr D on the basis of breaches of contract by the Supplier.

Section 140A – allegations of an unfair credit relationship

Mrs D and Mr D's complaint about an unfair credit relationship was brought for a number of reasons which I've outlined above. One of them was – in essence – the same set of alleged misrepresentations they complained about when making their Section 75 claim. I have dealt with those misrepresentations already and don't need to do so again.

Another reason advanced on Mrs D and Mr D's behalf by PR, for their credit relationships with Shawbrook having been unfair to them, is that they were not told that, if they defaulted on their loan repayments, their timeshare weeks would be confiscated.

I think PR must be mistaken here, because I have been able to find no evidence (such as terms within the loan agreements) that any default on their part in relation to their loans with Shawbrook, would have had any impact on their timeshare weeks.

The final reason given by PR is that the Supplier marketed or sold the timeshare weeks on both occasions to Mrs D and Mr D, as investments, in breach of Regulation 14(3) of the Timeshare Regulations, and that this was the reason they went ahead with their purchases. This, PR says, rendered Mrs D and Mr D's credit relationships with Shawbrook unfair to them.

This part of the complaint fails for essentially the same reasons as the claims for misrepresentation. It has been alleged that something was said verbally by the Supplier when the timeshares were sold, which amounted to selling or marketing the timeshares as an investment. Other than PR's assertion that this happened in the letter of complaint, there is no evidence in this case to support the allegations made. There is no testimony from Mrs D or Mr D, nor any supporting documentary evidence. In fact, the documentary evidence which does exist suggests Mrs D and Mr D did not buy the timeshares because they thought they were investments. I say that because I can see they signed declarations at the time of each purchase which read:

"..we have not entered into this purchase purely for a wider investment opportunity or financial gain".

And with all that being the case, I think there's insufficient evidence the Supplier marketed or sold the timeshares to Mrs D and Mr D at the point of each purchase. I've thought about PR's other points, but my overall conclusion is that I've not seen evidence to show that Shawbrook participated in credit relationships with Mrs D or Mr D that were unfair to them within the meaning of Section 140A of the CCA.

My final decision

For the reasons explained above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 13 March 2026.

Will Culley
Ombudsman