DRN-4676214

## The complaint

Mrs C and Mr C complain Shawbrook Bank Limited ("Shawbrook") has failed to take responsibility for the mis-selling of a timeshare that it financed.

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

## What happened

Mrs C and Mr C were introduced to a timeshare provider (the "Supplier") at a resort in Tenerife and entered an agreement to buy a timeshare. On 6 May 2014 they agreed to buy week 19 in apartment 415 at the resort, for 13,793 euros. As part of the deal they were given a cashback cheque of 1,000 euros, and the first two years of annual maintenance fees for the timeshare were covered by the Supplier. Additionally, it appears Mrs C and Mr C surrendered an existing holiday product to the Supplier.

The timeshare Mrs C and Mr C bought was a type of "fractional" timeshare, which meant that as well as giving Mrs C and Mr C holiday rights, it also entitled them to a share in the net sale proceeds of the timeshare apartment at the end of the timeshare scheme in 2030.

To finance the purchase, the Supplier arranged a loan (the "Credit Agreement") with Shawbrook for £12,000. This was repayable by Mrs C and Mr C over 180 months at £145.22 per month. I understand the loan was settled early.

On 19 July 2019, PR wrote to Shawbrook on Mrs C and Mr C's behalf with a complaint. They sought to hold the bank liable for the mis-selling of the timeshare by the Supplier, under the principles of connected lender liability. PR argued that the Supplier had told Mrs C and Mr C various things which were not true to influence them into the purchase, specifically:

- That their existing holiday product was a contract in perpetuity.
- That they were guaranteed a return on investment when the apartment was sold in 2030.
- That they could sell the timeshare earlier and make a profit.
- That they could rent out their week if they didn't use it, for over 1,000 euros.

PR also argued that the Supplier had ceased trading, meaning that it wouldn't be possible to rent out the week, nor would any resale take place, either now or in 2030.

Shawbrook rejected the complaint, which was subsequently referred to the Financial Ombudsman Service.

One of our Investigators looked into the complaint. They didn't think it should be upheld, writing to both parties, citing a lack of evidence that false statements had been made which had induced Mrs C and Mr C into the contract. They also noted that the timeshare could still be used and that it was the responsibility of a trustee to sell the apartment in 2030, rather

than the Supplier.

PR appealed against the assessment of our Investigator but provided no further submissions. Later, a second Investigator looked into the complaint. She came to essentially the same conclusions, again noting a lack of evidence (in particular, a lack of direct evidence from Mrs C and Mr C) to support any false statements having been made, and a lack of evidence to show that Mrs C and Mr C either could not use their timeshare in the same way as previously as a result of the Supplier ceasing to trade, or that they would no longer be entitled to a share in the proceeds of the sale of the apartment in 2030.

PR wrote back, disagreeing with the second Investigator's assessment. This time PR made further submissions. I could summarise its arguments as follows:

- The original letter of complaint to Shawbrook had been based on conversations it had had with Mrs C and Mr C, so it should be accepted as though it were direct testimony from them. Mrs C and Mr C were also prepared to provide signed statements if needed. PR complained that Mrs C and Mr C had not previously been given the opportunity to provide a witness statement.

- It was up to Shawbrook to prove that the statements made by the Supplier to Mrs C and Mr C were true, rather than for Mrs C and Mr C to prove that they were untrue.

- The collapse of the Supplier meant the resale and rental arrangements could no longer happen. While Mrs C and Mr C may still be able to use the timeshare, that missed the point.

As no agreement could be reached, the case has 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. I'll explain why, but 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 on 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 C and Mr C 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 C and Mr C 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 C and Mr C, 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 C and Mr C 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 Agreement. An unfair debtor-creditor relationship can also be based on the terms of a related agreement (such as the purchase agreement for the timeshare week) 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 Agreement 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 the purchase.

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 C and Mr C, 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.

First of all, I intend to consider whether or not Mrs C and Mr C 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 C and Mr C.

*The significance of the lack of direct testimony*

This is chiefly 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 March 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 C and Mr C 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 C and Mr C in their own words.[1] The letter is essentially a series of bare assertions not supported by evidence from Mrs C, Mr C or other contemporaneous sources.

[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 C and Mr C's individual circumstances, reducing its value as evidence of what happened when the timeshares were sold.

As far as I can see, PR first offered to provide direct testimony from Mrs C and Mr C 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.

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 then there would be very little weight that I could attach to it.

PR has also complained that Mrs C and Mr C were not asked by the Financial Ombudsman Service at an earlier stage for their direct testimony.

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 C and Mr C 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 C and Mr C'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 C and Mr C, and which they relied on when deciding to make their purchase.

In this case, it's been alleged by PR that the Supplier falsely told Mrs C and Mr C that the timeshare would generate a return on investment when it was sold in 2030, that they could sell their timeshare earlier, and that they could rent out their weeks for in excess of 1,000 euros per week. Additionally, PR alleges the Supplier told Mrs C and Mr C that their existing holiday product was an "in perpetuity" contract.

PR has said that is up to Shawbrook to prove that the statements made by the Supplier *were* true. But even if that were correct, Mrs C and Mr C would still need to establish, on the balance of probabilities, that the statements were in fact made in the first place.

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

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 statements alleged. I've considered the available paperwork dating to the time of the purchase, and have been able to find no references to renting out of the week, of there being a return on investment in 2030, or that the week could be sold earlier for 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 a Section 75 claim from Mrs C and Mr C on the basis of misrepresentations by the Supplier.

*Section 75 – the Supplier's alleged breaches of contract*

PR says that the Supplier has ceased trading, and while it appears now to accept that this doesn't prevent Mrs C and Mr C from using their timeshare, it maintains that this means the sale of the apartment won't happen in 2030, nor can Mrs C or Mr C sell their timeshare earlier or rent it out. I've interpreted this as an allegation that the Supplier is (or will be) in breach of contract.

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 C and Mr C's case, but no evidence has been put forward to support the contention that no sale will now take place in 2030. Regarding not being able to rent out or resell the timeshare earlier than 2030, there appears to be nothing in writing which bound the Supplier to any contractual responsibilities concerning these things.

So there is insufficient evidence to conclude the Supplier is in breach of contract. If, in 2030, the contractual terms surrounding the sale of the Allocated Property are not honoured, then Mrs C and Mr C *may* have a claim at that point in time.

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

*Section 140A – allegations of an unfair credit relationship*

PR didn't specifically frame Mrs C and Mr C's complaint as a complaint about an unfair credit relationship, but our second Investigator went on to consider in her assessment, the bank's potential responsibility under Section 140A.

In particular, our Investigator noted that one of the allegations made by PR on Mrs C and Mr C's behalf was that the Supplier had told them the timeshare was an investment, and that selling timeshares as investments was against the relevant regulations on selling timeshares. Our Investigator observed that this could render the credit relationship between Mrs C and Mr C, and Shawbrook, unfair to them.

Unfortunately, I think this part of the complaint must fail for essentially the same reasons as the claims for misrepresentation. It has been alleged that something was said verbally by the Supplier when the timeshare was sold, which amounted to selling or marketing the timeshare 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 C or Mr C, nor any supporting documentary evidence.

And with all that being the case, I think there's insufficient evidence the Supplier marketed or sold the timeshare to Mrs C and Mr C at the point of 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 a credit relationship with Mrs C or Mr C that was 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 C and Mr C to accept or reject my decision before 13 March 2026.

Will Culley
**Ombudsman**