DRN-4891534

Financial Ombudsman Service

The complaint

Mr P and Mrs R's complaint is that Shawbrook Bank Limited ('Shawbrook') acted unfairly and unreasonably when deciding against paying their claims under Section 75 of the Consumer Credit Act 1974 (the 'CCA') and being party to an unfair debtor-creditor relationship under Section 140A of the CCA.

What happened

After purchasing a trial membership in July 2011, Mr P and Mrs R purchased membership of an asset-backed timeshare called the Fractional Property Owners Club ('FPOC') from a timeshare provider (the 'Supplier') on 2 April 2013 (the 'Time of Sale 1'). They bought 1,035 Fractional Points at a cost of £12,911.

Mr P and Mrs R paid for their FPOC membership by taking finance from Shawbrook in both of their names. They entered into a 15 year restricted use Fixed Sum Credit Agreement for £13,797 and the total amount repayable after interest and charges was £39,076.80 (the 'first Credit Agreement').

Mr P and Mrs R then upgraded their membership on 2 September 2014 (the 'Time of Sale 2'). They increased their Fractional Points to 1,550 at a cost of £9,251.

This was again paid for by taking finance from Shawbrook in both Mr P and Mrs R's names, entering into a consolidated 15 year restricted use Fixed Sum Credit Agreement for £23,155. The total amount repayable after interest and charges was £65,541.60 (the 'second Credit Agreement').

Under the terms of the FPOC, Mr P and Mrs R could exchange their Fractional Points for holidays. And, at the end of the projected membership term, they also had a share in the sale proceeds of a property tied to their membership (the 'Allocated Property').

Mr P and Mrs R wrote to Shawbrook, via a professional representative ('TMA') on 16 August 2017 to complain. They said they wanted to make a Section 75 claim and said the following misrepresentations were made:

- They were told the only way they could exit their existing timeshare was to purchase a fractional points membership. But, they now know they could have exited the membership in different circumstances.
- They were told they would be guaranteed to exit the timeshare after a finite number of years, but this isn't true as the scheme can only be brought to an end if a purchaser is found. As no sale is guaranteed, it's entirely possible the scheme could continue for far longer than the original membership.

They also said there had been a breach of contract because:

- While the contract says the customer will receive "the net proceeds of the Property" there is nothing within the documentation to confirm that Mr P and Mrs R own any part of any property and so there can be no guarantee that any proceeds of sale would ever be received by them.

Lastly, they said there was an unfair relationship under Section 140A of the CCA because:

- The clauses governing the charges for membership and the terms governing the sale of the Allocated Properties constitute unfair terms under the Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR'). And, these clauses weren't explained fully or at all to Mr P and Mrs R.
- A proper assessment of whether Mr P and Mrs R could afford the loan was not completed and no review of other financial products available was completed either.
- The inclusion of a term which allows the Supplier to take possession of Mr P and Mrs R's FPOC membership in the event of non-payment of one or more of the ongoing costs was unfair under the UTCCR. They referred to the case of *Link Financial Ltd v Wilson* [2014] EWHC 252 (Ch) in which it was found that a similar contractual term, that allowed the claimant's membership to be forfeited for non-payment of maintenance fees, was unfair under the UTCCR and gave rise to an unfair credit relationship.
- The Supplier was paid commission.
- The sale(s) were pressured.

Shawbrook dealt with Mr P and Mrs R's concerns as a complaint and issued its final response letter on 15 November 2017, rejecting it.

Mr P and Mrs R then referred their complaint to the Financial Ombudsman Service on 14 May 2018.

The complaint was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits on 5 November 2020.

TMA confirmed Mr P and Mrs R disagreed with these findings and asked for the matter to be referred to an Ombudsman for a final decision to be made. They provided a general submission, written with legal assistance, which was described as 'provided to assist a number of purchasers of FPOC products from the Supplier with claims against lenders under Section 75 of the CCA'.

The submission was described as being limited to the specific issue of whether the product could be accurately described or categorised as "a share in a specific property in a specific resort" or "a form of property ownership" as it would be understood by the average consumer. The submission ultimately concludes that it isn't property ownership in the sense which would be understood by the average consumer and therefore the average consumer would be misled. These submissions are, in my view, generic in that they relate to the nature of the membership and are not tailored to Mr P and Mrs R's own circumstances. I have read them in full and, in so far as they relate to the complaint I have before me, I have taken them into account.

Mr P and Mrs R then appointed a new representative ('TL') on 29 March 2023. TL then said they wanted to raise additional points following the judgment in a Judicial Review of one of the lead decisions previously issued by this Service *(R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd; R. (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) (the 'Judicial Review')).

They said:

- Mr P and Mrs R were told the membership would be a good investment.
- They were told that by purchasing the product they would have no problems in booking holidays wherever they wanted. But, in reality, holidays couldn't be booked outside of Tenerife and Spain and only then with limited success, in terms of when and where they could get availability, if at all.
- Clear information was not provided about the possible increase of the annual

management charges and that there was no basis for the calculation of these beyond what the Supplier wished to charge.

- They referred to various parts of the Judicial Review.

The complaint was then assessed afresh by a second Investigator, who rejected the complaint on its merits on 27 November 2023. In response, TL again asked for a final decision to be made by an Ombudsman and provided further comments which largely repeated what had been said before, albeit with more detail.

As agreement on the outcome could not be reached, the complaint has been referred to me to make a decision.

I considered the matter and issued a provisional decision (the 'PD'). In that decision, I said:

"*Overall, I have found it difficult to follow this complaint. Much of it relates to Mr P and Mrs R's representative's arguments about timeshare memberships in general and I have seen little information about the actual sales in question. There is little to no clarity on which allegations relate to which sale and what has been provided makes it extremely difficult to determine this. Additionally, in the most recent submissions provided by the representative, some of the comments appear to relate to the purchase of the trial membership which, from what I have seen, was never part of this complaint.*

<u>*Mr P and Mrs R's Section 75 claim for the Supplier's alleged misrepresentations*</u>

Mr P and Mrs R say that there were a few elements to FPOC membership that were misrepresented by the Supplier, leading them into their purchase(s) of FPOC membership.

To reiterate briefly, those were:

- *They were told the only way they could exit their existing timeshare was to purchase a fractional points membership. But, they now know they could have exited the membership in different circumstances.*
- *They were told they would be guaranteed to exit the timeshare after a finite number of years, but this isn't true as the scheme can only be brought to an end if purchaser is found. As no sale is guaranteed, it's entirely possible the scheme could continue for far longer than the original membership.*
- *They were told that by purchasing the product they would have no problems in booking holidays wherever they wanted. But, in reality, holidays couldn't be booked outside of Tenerife and Spain and only then with limited success, in terms of when and where they could get availability, if at all.*

In order for me to say there was a misrepresentation made by the sales agent in the sales of the FPOC membership, I would have to say that there is evidence that Mr P and Mrs R were told something that was not true. If that was found, it's possible that Shawbrook could be jointly liable with the Supplier for those misrepresentations under the operation of Section 75 of the CCA.

In terms of being able to exit their existing timeshare, Mr R and Mrs P haven't provided any detail about what exactly they were told or promised in this regard at either time of sale. At the Time of Sale 1, they didn't have an existing timeshare, only a trial membership which would end after a set period anyway. And, I don't think it's logical or likely that that at the Time of Sale 2, the sales agent told them that the only way to exit their existing (fractional) membership was to buy a fractional membership, given this is what they already had and their other claim that they had been told fractional memberships had a set end date. I don't find this allegation is consistent with the evidence or Mr R and Mrs P's own purchasing history.

Regarding the sale of the Allocated Property, and the associated end of the membership, there is nothing that makes me think they were likely to have been given a guarantee by the

Supplier that the Allocated Property would be sold at a specific time and, with it, that their FPOC membership would end at that time too. From what I know about the Supplier's sale process, Mr P and Mrs R were likely to have been given a Standard Information Form (designed to give prospective FPOC members certain information about membership) that explained that the FPOC purchase agreement will expire when the Allocated Property is sold and a Fractional Rights Certificate that explained the date that the Property will be put up for sale. I acknowledge that the sale of the Allocated Property looks like it could be postponed. But it could only be postponed by the Supplier for up to two years in limited circumstances. And if the owners of the Allocated Property (like Mr P and Mrs R) wanted to postpone the sale, they could only do so if they all consented. So, I think it was more likely that Mr P and Mrs R were simply told that the Allocated Property would be placed for sale at a set time in the future and that the net sales proceeds would then be divided up, not that there was a guaranteed date on which the Allocated Property would actually sell. And as common-sense dictates that such a promise would be an impossible one to keep, it seems inherently unlikely to me that it would have been made. What's more, as there's little evidence that the Supplier gave Mr P and Mrs R a guarantee that the Allocated Property would be sold at the 19 year mark, ending their membership there and then, I don't think membership was misrepresented by the Supplier for this reason either.

Regarding availability, TL said Mr P and Mrs R were told that by purchasing the product they would have no problems in booking holidays wherever they wanted. But, in reality, holidays couldn't be booked outside of Tenerife and Spain and only then with limited success, in terms of when and where they could get availability, if at all.

In the initial submissions provided by TL once they became Mr P and Mrs R's representative, it was said they were able to book holidays but only in Spain and Tenerife and this was limited according to availability. But then, when sending further submissions to our Service in response to the Investigator's second view, it was said Mr P and Mrs R were never able to book any holidays. These statements are inconsistent and again, it's unclear which comments relate to which sale or period of time.

But in any event, I can see from Mr P and Mrs R's signed Information Statement it explains that space is subject to availability and seasonal demand. I can't see that any other guarantees were made.

Given that it seems Mr P and Mrs R made use of their Fractional rights, in my view, even if they weren't able to take certain holidays, it seems this was more likely to have been because they were pushing up against the limits of what their Fractional Points would get them rather than a more fundamental problem for members.

I note that TL have said Mr P and Mrs R were told that purchasing a full membership would "guarantee that these problems of availability would not be a problem". But, Mr P and Mrs R haven't elaborated on this as to what exactly they were told, by whom and in what circumstances as to how purchasing a full membership would resolve their existing issues and why such representations were factually untrue. I can see that Mr P and Mrs R only had a trial membership before taking out their first fractional membership, so it's not clear to me what problems, if any, they had in using that trial membership. Shawbrook have recorded that the first fractional membership was purchased when Mr R and Mrs R used their trial membership for the first time.

Lastly, TL have said the holidays offered to Mr P and Mrs R were supposed to be exclusive to members but were actually also advertised on the wider market at roughly the same cost as the annual fees. This comment appears to be made more in the context of it being sold as an investment, which I've addressed further below. But, in any event, no evidence has been provided to support this allegation of being told the product was exclusive to members. And, I can't see that any such guarantees were provided in the sales documentation in relation to the product being cheaper than others or not available to non-members. For example, in Mr

P and Mrs R's signed Member's Declaration, it explains the Supplier's prices will be comparable to, but not necessarily cheaper than, other providers of the same services.

In short, therefore, I have not seen enough evidence to say, on balance, that any alleged false statements of fact were made to Mr P and Mrs R by the Supplier.

So having considered everything, and without a more detailed description of the conversation(s) surrounding the alleged misrepresentations, or any supporting evidence, Mr P and Mrs R's claim of misrepresentation doesn't have sufficient weight to succeed. And for this reason, I do not think it was unfair or unreasonable for Shawbrook to turn down their

Section 75 claim for misrepresentations.

<u>Mr P and Mrs R's Section 75 complaint about the Supplier's breach of contract</u>

In relation to this point, I've not seen anything which makes me think the Allocated Property would not be able to be sold at the conclusion of the contract period or that Mr P and Mrs R won't receive their share of any proceeds from that sale which are due to them. TMA has said that this amounted to a breach of contract, but as Mr P and Mrs R's Allocated Property has not yet been placed for sale, I don't see how this element of the contract could be breached yet.

These allegations could be read such that there might be a future breach of contract, but on the evidence provided, I can't see that there has been an actual breach. So, it follows that I don't think Shawbrook have handled this element of Mr P and Mrs R's Section 75 claim unfairly or unreasonably.

<u>Mr P and Mrs R's complaint about Shawbrook's participation in an unfair credit relationship</u>

I've already explained why I'm not currently persuaded that the contract entered into by Mr P and Mrs R was misrepresented or breached by the Supplier. But there are other aspects that, being the subject of Mr P and Mrs R's dissatisfaction, I need to explore in more detail. Some of these matters, such as the question of whether the loan(s) were affordable, can be considered as points of complaint in their own right. But some of these concerns could give rise to an unfair debtor-creditor relationship as set out in Section 140A of the CCA.

Affordability of the loan

Mr P and Mrs R say Shawbrook didn't complete a proper affordability assessment in relation to the loan(s) they took out. Shawbrook have said in their final response to the complaint that they did do such checks, although I haven't been provided with any information regarding what affordability check(s) were carried out in relation to Mr P and Mrs R, and what these showed.

But, even if no affordability assessment or check was carried out, or these weren't done properly, I'm not currently persuaded it makes a difference in this case. The reason I say this is that there has been no evidence provided by Mr P and Mrs R that the loan(s) actually were unaffordable for them at either of the Times of Sale. I note that Shawbrook have said there were no issues with the lending in this regard.

So, on the basis of the evidence and information I do have, even if reasonable and proportionate affordability checks weren't completed by Shawbrook at the Times of Sale, I have to consider what difference it would have made to Shawbrook's lending decisions if such checks had been carried out i.e., would such checks more likely than not have shown that Mr P and Mrs R were likely to sustainably repay what they were being lent. And as I've not seen anything to suggest the loans weren't affordable for them, it follows that I can't say Shawbrook's decisions to lend to them caused an unfairness that requires a remedy in this case.

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

Mr P and Mrs R have told our Service that the sale(s) were pressured, lengthy and the documentation was provided to them late in the day.

From what I know of the Supplier's general sales practices at these times, I don't doubt that the sales processes Mr P and Mrs R attended were lengthy. But I don't think what's been provided sufficiently supports that any malicious or undue pressure was applied to them during the sale(s), such as to cause them to buy something they otherwise wouldn't have done.

I'm aware that often, prospective members were offered cheaper deals on the day than if

they'd approached the Supplier at another time. And, while it may have been persuasive to offer a discount or 'special price', in my view I don't think there is anything wrong with offering customers limited time offers.

Mr P and Mrs R don't describe any further exactly how they were pressured. So, from the evidence provided, I'm not sufficiently persuaded either of the sales were so pressured it caused them to buy something they otherwise wouldn't have done, nor do I think this created an unfair relationship that requires a remedy.

It is also important to note that Mr P and Mrs R were also given a 14-day 'cooling off' period following both sales, during which time they could cancel the purchase and the associated Credit Agreement without penalty.

I'm also mindful that Mr P and Mrs R had made a previous purchase of a trial membership prior to this one. So, I think it's reasonable to say that they were already interested in taking holidays with the Supplier.

I don't therefore think this is a reason to uphold this complaint given its circumstances.

In response to the most recent Investigator's view, TL said Mr P and Mrs R were told the membership would be a good investment and that this needed to be considered in light of the Judicial Review judgment.

It is not clear to me whether this is something Mr P and Mrs R actually say happened, or whether this is something that has only been raised in light of the Judicial Review. Given that this allegation was not raised when the complaint was first made, nor do I have any evidence from Mr P and Mrs R, I am not certain that this is something they actually said happened.

Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'), prohibited the Supplier from marketing or selling the FPOC membership as an investment. At the Times of Sale, the provision said:

"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 regulate contract."

There was an investment element to Mr P and Mrs R's FPOC membership as they stood to benefit from a share of any proceeds when the Allocated Property was eventually sold. But the fact that FPOC membership included an investment element did not, itself, breach the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or the marketing and selling of such a product per se.

In other words, the Timeshare Regulations did not ban the sale of products such as the one Mr P and Mrs R purchased. They just regulated how such products were sold.

To conclude, therefore, that FPOC membership was likely to have been sold to Mr P and Mrs R as an investment in breach of Regulation 14(3), I have to be persuaded that the Supplier led them to believe that membership offered them the prospect of a financial gain and used that fact to induce them into the purchase.

From what I've been provided with so far, it seems this wasn't an allegation that was ever made to Shawbrook as part of the original complaint to them, rather it has been mentioned

for the first time since the first view from an Investigator was issued on this complaint. For example, this point wasn't mentioned in the letter of complaint where it was explained what Mr P and Mrs R's complaint was. And they haven't described at all in any of the submissions provided what was said to them, by whom and in what circumstances to support the suggestion in question.

Again, the membership plainly did have an investment element to it as they were entitled to a share of the sale proceeds of the Allocated Property.

But, it's important to note that the judgment in the Judicial Review didn't find that FPOC Memberships, such as Mr P and Mrs R's, were inevitably sold as investments or that there was any widespread mis-selling of them. In fact, the judge held (at 66):

"My necessary starting point is the ombudsman's explicit acceptance that a fractional ownership timeshare does not inevitably or inherently – purely by virtue of its fractional ownership component – transgress the prohibition in Reg.14(3). That is a point of some importance. Reg.14(3) prohibits the marketing or selling of a timeshare contract as an investment. It does not prohibit the existence of an investment component in a timeshare contract or the marketing or selling of such a product per se."

The judge went on to say (at 71) it would be an error of law to say that the intrinsic design of FPOC Membership led to a breach of Reg.14(3).

And with all of that being the case, I don't think it's likely the Supplier breached the prohibition on selling timeshares as investments. Even if I'm wrong about that, based on what I've seen, I'm not sufficiently persuaded by what's been provided that the investment element of the FPOC membership was important enough to Mr P and Mrs R's purchasing decision(s) to render their relationship with Shawbrook unfair to them if the membership had, in fact, been sold as an investment. From what they've said, the main reasons for their unhappiness with the product seems to be the availability of holidays and potential difficulty in selling the timeshare now. Taking this into account, along with that it doesn't seem this issue was raised previously as part of the original reasons for the complaint, this therefore doesn't suggest to me that any sale of the FPOC membership as an investment was important to Mr P and Mrs R's purchasing decision.

The provision of information at the Time of Sale

Mr P and Mrs R raised various points in relation to the provision of information about the annual management fees.

They said they weren't given sufficient information about these, in particular about the possibility of these increasing and the basis for how they're calculated. And, they also say they were given unclear information about this.

But, they haven't expanded on this point with any further detail such as what they were told about the fees at either of the Times of Sale, and what they understood from this.

I note they have said they were told that maintenance fees would be small incremental costs roughly in line with inflation, but this comment seems to relate to the sale of the trial membership, as opposed to the Time of Sale 1 or the Time of Sale 2 which are the subject of this complaint. Although, it's unclear how it would relate to the trial membership either, since that did not have maintenance fees associated with it.

But, in any event, it seems likely to me that Mr P and Mrs R were told by the Supplier at the Times of Sale that the annual maintenance fees were payable each year and that they may increase. For example, I can see in their signed Information Statement it explains owners will be required to contribute to the charges for management, repair and maintenance of the property by means of an annual charge, payable whether weeks are used or not. And, that the charges will be budgeted annually and will be subject to increase or decrease as

determined by the costs of managing the project (not simply what the Supplier wished to charge as has been asserted) and are payable in advance each year.

And while it's possible the Supplier didn't give Mr P and Mrs R sufficient information, in good time, on the various charges they could have been subject to as FPOC members in order to satisfy its regulatory responsibilities at the Times of Sale, I haven't seen enough to persuade me that this, alone, rendered their credit relationship with Shawbrook unfair to them.

Other points

Mr P and Mrs R said the Supplier was paid commission and this made the relationship between them and Shawbrook unfair.

I don't think the fact that Shawbrook might have paid the Supplier commission was incompatible with its role in the transaction. The Supplier wasn't acting as an agent of Mr P and Mrs R but as the supplier of contractual rights they obtained under the Purchase Agreement. And, in relation to the loan, based on what I've seen so far, it doesn't look like it was the Supplier's role to make an impartial or disinterested recommendation or to give Mr P and Mrs R advice or information on that basis, including about finances. What's more, as I understand it, the amounts of commission paid by Shawbrook to suppliers (like the Supplier) was, on average, 0-4.6% and unlikely to be much more than 10%. And on that basis, I'm not persuaded that any non-disclosure and payment of commission rendered Mr P and Mrs R's credit relationship with Shawbrook unfair for the purposes of Section 140A given the circumstances of this complaint[1].

Mr P and Mrs R's representative also says that the inclusion of a term in their FPOC purchase agreement(s) allowing the Supplier to take possession of their timeshare for failing to make even modest payments was unfair for the purposes of the UTCCR. And it refers to a High Court case in which it was held that a similar term led to an unfair relationship under Section 140A given the facts of that case. They also said the same regarding the terms which governed the membership charges and the sale of the Allocated Property.

I accept that it's possible that some of these terms may go against the requirements of the UTCCR. But I don't think I need to formally decide this point because, given the particular circumstances of this complaint, even if the terms in question were unfair under the UTCCR, it seems unlikely to me that they led to any unfairness in the relationship between Mr P and Mrs R and Shawbrook for the purpose of Section 140A.

As the Supreme Court decision in Plevin v Paragon Personal Finance Ltd [2014] UKSC 61 ('Plevin') makes clear, it doesn't automatically follow that regulatory breaches create unfairness for the purpose of Section 140A. Such breaches and their consequences (if there are any) must be looked at in the round, rather than in a narrow or technical way.

As a result, I don't think the mere presence of a contractual term that was/is potentially unfair is likely to lead to an unfair credit relationship unless it had been applied in practice. And as I can't see that the terms in question have actually been operated unfairly against Mr P and Mrs R during their time as FPOC members, I don't think they gave rise to an unfair relationship under Section 140A of the CCA.

Lastly, I have considered some of the additional matters raised in the generic submissions supplied by TMA. They say that the interest rates on loans provided to purchase timeshares were very high.

It seems likely to me that Mr P and Mrs R were told their interest rates at both Times of Sale. For example, I can see in both of their signed Credit Agreements that it clearly states the

[1] Shawbrook provided the Financial Ombudsman Service with information on its commission rates – which I accept in confidence under DISP 3.5.9 [R]. But, in keeping with that rule, one of Shawbrook's Managing Directors (who is a FCA Approved Person) confirmed, in summary, the information I included in the paragraph above.

applicable interest rate and the duration of the agreement. It also explains the total amount they'd be repaying after interest and charges.

Being charged interest when borrowing money is normal, and I do not see that charging interest would have led to an unfairness in this case. Further, I've not been provided with any reason why such a rate was unfair given Mr P and Mrs R's circumstances, so I can't say the level of interest led to an unfairness that requires a remedy in this case.

I have also considered the suggestions in the generic submissions that the terms were complex and may not have been recognised as 'legal' in overseas jurisdictions. But the actual timeshares Mr P and Mrs R took out were governed by English law and I can't see anything within them that made the agreements voidable in and of themselves under English law. Further, I accept the terms of the agreements were complex, but I've not been pointed to any reason why any of the terms caused Mr P and Mrs R an actual unfairness that requires a remedy."

Overall, I didn't think that Shawbrook acted unfairly or unreasonably when it declined Mr P and Mrs R's Section 75 claims and I was not persuaded that Shawbrook was party to credit relationships with Mr P and Mrs R that were unfair to them. And, having taken everything into account, I could see no other reason why it would be fair or reasonable to direct Shawbrook to compensate Mr P and Mrs R.

Following my provisional decision, having considered the important judgment handed down by the Supreme court on 1 August 2025 in *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('*Johnson, Wrench and Hopcraft*'), I also communicated to both parties how I was not persuaded that Mr P and Mrs R's credit relationship with Shawbrook was unfair to them for reasons relating to the commission arrangements between it and the Supplier[2].

Shawbrook did not respond to the PD. TL did respond – they did not accept the PD and provided some further comments and evidence they wish to be considered.

Having received the relevant responses from both parties, I'm now finalising my 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, in many ways, 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 in detail here. But I would add that the following regulatory rules/guidance are also relevant to the Time of Sale 1:

<u>The Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010</u>

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

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[2] Shawbrook did not respond. TL did respond but confirmed they did not wish to challenge my conclusions on this particular point.

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

And the following regulatory rules/guidance are relevant to the Time of Sale 2:

The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance

Below are the most relevant provisions and/or guidance as they were at the relevant time:

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

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 from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

TL's response to the PD consists of a witness statement now provided by Mr P and Mrs R drafted around a month after the PD was issued. TL also sent some comments confirming the points they still wished to challenge. Namely, the alleged misrepresentations made at the

Times of Sale, the alleged breach(es) of Regulation 14(3) of the Timeshare Regulations, the fairness of the credit relationships and the affordability of the loans.

I firstly note that TL's further comments here are largely a simple re-stating of the bare allegations and complaint points already made. No new evidence has been provided, beyond the witness statement described above (which I've addressed further below). The comments provided by TL again appear to be largely generic, with little that is specific to Mr P and Mrs R's own circumstances and a lack of specificity as to which comments relate to which purchase, for example.

There are other points of complaint raised originally which I addressed in my PD, but TL has not sought to challenge further. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on TL's points raised in response.

<u>Mr P and Mrs R's Section 75 claim for the Supplier's alleged misrepresentations</u>

In my PD, I explained in summary, I had not seen sufficient evidence to say that, on balance, any false statements of fact were made to Mr P and Mrs R by the Supplier at either of the Times of Sale. So, having considered everything and without a more detailed description of the conversation(s) surrounding the alleged misrepresentations, or any supporting evidence, I explained Mr P and Mrs R's claim of misrepresentation doesn't have sufficient weight to succeed.

In response, TL has simply reiterated the alleged misrepresentations. But, as I've already explained, bare allegations are not evidence.

I acknowledge Mr P and Mrs R have now provided a witness statement. But, this doesn't change my view on this particular part of the complaint. Some of the alleged misrepresentations simply don't appear in this statement. And as regards some that TL has mentioned, such as being pressured into the sale, I don't understand how this could constitute a misrepresentation. It's also unclear in parts of the statement which comments relate to which Time of Sale.

I am also mindful here that this statement was only provided following both of the Investigators' views and my PD. So, there is a risk that what has been written in the statement has been, even subconsciously, influenced by some or all of those outcomes. Afterall, the statement contains new information that has not previously been adduced which I find hard to understand. So ultimately, due to the timing of this evidence and the way it's been provided, I able to place little, if any, weight on it.

It follows that for the above reasons along with all of those I already explained in my PD, I'm not persuaded that, on balance, any of the alleged false statements of fact were made to Mr P and Mrs R by the Supplier at either of the Times of Sale – I simply haven't been provided with sufficient persuasive evidence that makes me think that was what happened here.

So, I don't think it was unfair or unreasonable for Shawbrook to turn down their Section 75 claim for misrepresentations.

<u>The Supplier's alleged breach(es) of Regulation 14(3) and the impact of this on the fairness of the credit relationships</u>

In response to the PD, TL has reiterated that the membership(s) were marketed to Mr P and Mrs R as an investment. They also again referred to the aforementioned Judicial Review judgment and the conclusions reached therein.

In my view, TL's submissions seem to be erroneously conflating the issue of whether there was a breach of Regulation 14(3) at the Time(s) of Sale and whether these were material to Mr P and Mrs R's purchasing decisions. And, they appear to be suggesting that if there was

a breach of Regulation 14(3) at the Time(s) of Sale, this is sufficient reason in and of itself to uphold this complaint. But I don't agree with that - the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision.

I also explained in my PD that the Judicial Review judgment didn't find that FPOC memberships (like Mr P and Mrs R's) were inevitably sold as investments or that there was any widespread mis-selling of them in the way TL seems to continue to be suggesting here. Indeed, the judge went on to say that it would be an error of law to say that the intrinsic design of the membership led to a breach of Regulation 14(3). Further, any complaint needs to be considered in light of its specific circumstances. So, just because the complaints that were subject to judicial review were upheld, it does not follow I must (or should) also uphold Mr P and Mrs R's complaint.

Again, even if there was a breach of Regulation 14(3) at either of the Times of Sale, I also needed to be persuaded that any such breach was material to Mr P and Mrs R's purchasing decisions.

I've considered the witness statement that has now been provided. Part of my assessment of the testimony was to consider when it was written, and whether it may have been affected by external factors such as the widespread publication of the outcome of the Judicial Review that TL has pointed to.

I explained in my PD that this allegation was not raised when the complaint was first made – it was only raised in response to the first Investigator's view, following the Judicial Review judgment. And, no evidence to support it was provided from Mr P and Mrs R. I also noted that from what had been said in the complaint submissions, the main reasons for their unhappiness with the product seemed to be the availability of holidays and the potential difficulty in now selling the membership itself. So, I wasn't persuaded that any breach by the Supplier at either of the Times of Sale was material to their purchasing decisions.

I acknowledge that they have now provided testimony to this effect, but I reiterate that if this was something that was important to them, it's difficult to explain why this wasn't mentioned originally - after all, the Letter of Complaint made to Shawbrook set out their concerns. This point was only raised in response to the Investigator's view and following the Judicial Review judgment.

So again, I think that there is a risk that Mrs P and Mr R's testimony has been coloured by the Investigator's view(s), my PD and/or the outcome in the Judicial Review. And, on balance, the way in which the evidence has been provided makes me conclude that I can place little weight on it. So, ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr P and Mrs R's purchasing decisions. I don't therefore think it is fair and reasonable to uphold this complaint for that reason.

<u>Other points</u>

TL also briefly reiterated the other reasons they felt the credit relationships were unfair to Mr P and Mrs R, such as high pressure sales tactics and a lack of transparency around fees. I already addressed all of these points in my PD, in quite some detail.

The only new point they've made in response to the PD, beyond a simple reiteration of the complaint points already made, is that the fairness of the credit relationships must be considered holistically, in the round.

But to be clear, in my PD I did already consider the whole of Mr P and Mrs R's credit relationships. And, I have done so again here. Ultimately, for all of the reasons already explained, I don't agree that the credit relationships between Mr P and Mrs R and Shawbrook were unfair to them or that this is a reason to now uphold the complaint.

Lastly, TL reiterated their concerns about the affordability of the loan(s) and the lending checks which were completed at the Time(s) of Sale. On this point, they've referred to Mr P and Mrs R's witness statement and said this confirms that 'minimal' checks were undertaken, the loan repayments exceeded their mortgage payments, they expressed concerns to the Supplier about affordability at the Time(s) of Sale and they were reassured by the Supplier that the product would 'pay for itself'.

In the witness statement now provided it's unclear which comments relate to which Time of Sale. Indeed, in relation to affordability, Mr P and Mrs R seem to have only provided comments in relation to one of the loans that are the subject of this complaint. But in any event, their comments here don't persuade me either of the loans were unaffordable for them. I note that they've said one of the monthly loan repayments was £100 more than their monthly mortgage payment. But I don't think this is a reason, in and of itself, to conclude the loan was unaffordable. I note that Mr P and Mrs R go on to say that at the end of each month they had £200-300 left over after all of their expenses had been paid (including food). And, they've acknowledged that they did meet the loan repayments, which aligns with the information Shawbrook has already provided in this regard, as described in my PD.

And as I explained in my PD, even if I were to find that Shawbrook failed to do everything it should have when it agreed to lend (and I still make no such finding), I would have to be satisfied that the money lent to Mr P and Mrs R was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationships with Shawbrook were unfair to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr P and Mrs R. So, I don't think this is a reason to now uphold this complaint.

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 P and Mrs R's Section 75 claims, and I am not persuaded that Shawbrook was party to a credit relationship with them 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 Shawbrook to compensate them.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs R to accept or reject my decision before 3 March 2026.

Fiona Mallinson
Ombudsman