DRN-4894907

Financial Ombudsman Service

The complaint

Mr T complains that Shawbrook Bank Limited ('Shawbrook') acted unfairly and unreasonably by being party to an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA').

What happened

In 2013 Mr T became a member of an asset-backed timeshare scheme called the Fractional Property Owners Club ('FPOC') from a timeshare provider ('the Supplier') having purchased 1,500 Fractional Points at a cost of £9,900. This arrangement entitled him to take a holiday for one week in the Supplier's accommodation every other year, for 19 years. But in addition, Mr T would be entitled to a share in the net sales proceeds of a property tied to his membership which would be realised at the end of his membership term. As his interest in this property was limited to a share in the net sales proceeds, he didn't have any preferential rights to stay in it or use it in any other way.

Mr T paid for this FPOC membership with a loan from a different finance company, and the circumstances of that purchase and the associated credit agreement have been considered separately in a different complaint.

On 10 April 2014 (the 'Time of Sale') Mr T purchased a new FPOC membership from the Supplier having attended a sales presentation in Tenerife. This new membership, which superseded the first, entitled him to take two weeks of holiday each year in the Supplier's accommodation. And like his previous membership, this afforded him rights to a proportion of the sale of an Allocated Property at the conclusion of the contract period.

Mr T traded in his existing FPOC membership, and the remaining balance of the purchase price of this second FPOC Membership, along with the associated *'Membership/Dues'* of £425 that was due that year, was paid for by taking finance from Shawbrook. Mr T entered into a 15-year restricted use Fixed Sum Credit Agreement (the 'Credit Agreement') for £8,549 with the total amount repayable after interest (APR 19.1%) being £24,332.40.

The purchase agreement (the 'FPOC Purchase Agreement') dated 10 April 2014, was made between one of the timeshare provider's sales companies and Mr T. The sales company, who had the right to promote and sell Fractional Rights in the FPOC, was the Supplier for the purposes of the CCA. Under the FPOC Purchase Agreement, Mr T agreed to be bound by the club Rules and Project Regulations.

Mr T, using a professional representative ('PL') wrote to Shawbrook on 7 November 2016 (the 'Letter of Complaint') to complain that at the Time of Sale:

- There had been no proper assessment of his financial position and ability to repay the loan, and no other available financial product was reviewed by the Supplier.
- Considerable pressure had been applied to him to procure his agreement to the purchase and loan.

- He was told his first FPOC purchase was mis-sold and worthless, and to rectify this the second FPOC membership was needed. This was untrue.
- He had never been able to take a holiday using his membership as there were never vacancies when he wanted them.
- The Supplier had breached EU law.

Mr T concluded that this all meant that the credit relationship between him and Shawbrook was unfair to him.

On 17 January 2017 Shawbrook responded to Mr T's complaint, which it did not uphold. It included a response from the Supplier which it said addressed the points he had made.

It said, in summary, where it is relevant to this complaint:

- Contrary to the suggestion that Mr T was subjected to a lengthy, high-pressure sales pitch, if he had had no interest in purchasing the product Mr T was free to leave the sales centre once the multimedia presentation was complete.
- Mr T had a 14-day right to withdraw which was explained.
- All aspects of the contractual agreement were covered in finite detail by the Compliance Officer.
- Mr T chose to upgrade his membership and was aware that the previous finance arrangement would remain in place, and Mr T had confirmed he would have no problem making both monthly payments.
- Mr T had made no requests to the Supplier for holidays since 2014, but as he had not paid the management fees his membership had been blocked in any event.
- Mr T was provided with the information needed for him to make an informed decision regarding the suitability of the FPOC membership for his personal needs, and the affordability of the finance.

On 2 May 2017 PL referred Mr T's complaint to our Service. In addition to his original complaint, it said that Shawbrook had paid the Supplier commission which had not been disclosed to Mr T, and as such this rendered the relationship between Shawbrook and Mr T unfair to him.

Mr T's complaint was assessed by an Investigator. But having considered everything that had been submitted, the Investigator thought Mr T's complaint shouldn't be upheld.

Mr T, in response to the Investigator's view, asked for the complaint to be reviewed by an Ombudsman. PL submitted that the FPOC membership had clearly been sold and marketed as an investment, and Mr T presented his written recollections summarising what happened at the Time of Sale of both of his 2013 and 2014 FPOC purchases.

In respect of his FPOC membership purchase at the Time of Sale, Mr T said:

> *"In April 2014 we took [the Supplier] up on their offer [of a one-week holiday self-catering in Tenerife] where again they took us on the same tour of elaborate villa's [sic] then followed by the customary hard sell pitch, again into the evening. Determined not to fall for another scam, the representative informed us that the initial sell [the first FPOC membership] was miss sold and worthless. That no vacation could be taken under that deal, and to rectify this situation, a new second agreement would be required to be signed. They advised there is nothing to be concerned about and stated with emphasis*

> *that the original contract would be superseded and it would be a better investment for us This new financial agreement would be for £135.15 per month for 180 months. Now exhausted mentally stressed we signed this new contract. Again on returning home it was apparent and much to our dismay that the initial contract was still active."*

As an informal resolution to this complaint could not be reached between the Investigator and Mr T, the complaint came to me for a decision.

The provisional decision

Having considered everything that had been submitted, I didn't think Mr T's complaint ought to be upheld. I set out my initial thoughts in a provisional decision (the 'PD') which I sent to both sides, inviting them to submit any new evidence or arguments that they wished me to consider before I finalised my decision. In the PD (which forms part of this decision) I said:

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

And when doing that, the Financial Conduct Authority's (FCA) Handbook of Rules and Guidance requires that I take into account the following under Rule 3.6.4 of the Dispute Resolution Rules ('DISP'):

1) *relevant:*
    a) *law and regulations;*
    b) *regulator's rules, guidance and standards;*
    c) *codes of practice; and*
2) *(when appropriate) what [I consider] to have been good industry practice at the relevant time.*

Where I have found evidence is incomplete, inconclusive, incongruent or contradictory, I have made my decision on the balance of probabilities – what I think is more likely than not to have happened – given the available evidence and wider circumstances.

<u>The Legal and Regulatory Context</u>

The legal and regulatory context that I think is relevant to this complaint is set out below:

- *The Consumer Credit Act 1974 (as amended by the Consumer Credit Act 2006)*
- *The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').*
- *The Consumer Protection from Unfair Trading Regulations 2008 ('CPUTRs')*
- *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service 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').*

Relevant Publications

The Timeshare Regulations provided a regulatory framework. But they represented a minimum standard. And as I've said above, I'm also required to take into account, where appropriate, what I consider was good industry practice at the time – which, in this complaint, is the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code').

Mr T's complaint that Shawbrook was party to an unfair debtor-creditor relationship

Mr T has said that Shawbrook was a party to an unfair debtor-creditor relationship, as defined by Section 140A of the CCA, and, when he told it about the unfairness, it didn't do anything to put things right. As Section 140A of the CCA is relevant law, I've considered it in this decision.

As it was said by the Supreme Court in Plevin v Paragon Personal Finance Ltd [2014] UKSC 61 ('Plevin') that the protection afforded to debtors by Section 140A of the CCA is in the consequence of all the relevant facts, I have looked at the sale of Mr T's FPOC membership and the Supplier's obligations during the precontractual negotiations while also taking into account that the FPOC Purchase Agreement qualifies under Section 19(1)(b) of the CCA as a 'related agreement' to the Credit Agreement. I have then considered whether I think Shawbrook was likely to have been a party to an unfair credit relationship under the Credit Agreement.

When looking at the Supplier's sales process, I've considered:

- *The Supplier's sales and marketing practices at the Time of Sale; and*
- *The provision of information by the Supplier at the Time of Sale.*

And in considering these points, I've considered the impact that one or both had on Mr T and his credit relationship with Shawbrook.

Finally, some of Mr T's points of complaint form the background facts and issues that could lead to an unfair debtor-creditor relationship, but some could form complaints about regulated activities in their own right. Here I've considered them through the lens of a complaint about an unfair relationship, but for the avoidance of doubt, I would have reached the same conclusion on these issues had they been considered as free-standing complaints.

Undisclosed Commission

It has been said that the Supplier was paid commission by Shawbrook, and as this wasn't disclosed to Mr T, that non-disclosure created an unfair debtor-creditor relationship in respect of the Credit Agreement. But 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 T but as the supplier of the contractual rights he 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 T advice or information on that basis. 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 T's credit

relationship with Shawbrook unfair for the purposes of Section 140A given the circumstances of this complaint.[1]

<u>The Supplier's sales and marketing practices</u>

Mr T has told our Service that the sales process was "the customary hard sell pitch, again into the evening", and this was following a tour of the site. He said he was told that agreeing to purchase a new FPOC membership was the only way to rectify the problems with the first sale, and he did so when "exhausted mentally stressed".

The RDO Code sets out, amongst other things, the Sales and Marketing Principles that the Supplier had to follow at the Time of Sale.

It states, under Principle 2.2.2, that selling Members will ensure "appropriate selling methods that treat the consumer with respect and allow the consumer choice between purchasing and reflection".

Similarly, The CPUTRs make clear that a commercial practice that significantly impaired a consumer's freedom of choice and caused them to buy something they otherwise wouldn't have done, could amount to an aggressive commercial practice. That is, in my view, something that could lead to an unfair debtor-creditor relationship.

I have considered what has been said in the Letter of Complaint and Mr T's testimony, the relevant sections of which have been reproduced above, but I've not seen sufficient evidence which leads me to think, on the balance of probability, that Principles 2.2.2 of the RDO Code or the CPUTRs were breached for reasons relating to pressure. Mr T has not said he was told he had to stay for the entire duration of the sales process if he was not interested in making the purchase, and he had been through a similar sales presentation and process the previous year where he had made his initial FPOC purchase, which he also said was pressured. So I think it is fair to say Mr T would likely have had a fairly defensive attitude to the sales process, and an understanding of how it worked, and yet he made a purchase of a new FPOC membership, so I find it hard to conclude that he only made the purchase due to pressure. And I've seen that Mr T was given a 14-day 'cooling off' period following the sale, during which time he could cancel the purchase and the associated Credit Agreement without penalty. And this would have still been available to him when he had returned home.

So given all of the above I currently think it is most likely that Mr T purchased the FPOC membership on 10 April 2014 because it was what he wanted, and was not due to pressure.

<u>The affordability of the loan and the circumstances in which it was provided</u>

Mr T, in the Letter of Complaint, has said that there was no proper assessment of his financial position and ability to repay the loan. He has expanded on this somewhat in response to the Investigator's view, but what he has told us was in relation to the finance agreement connected to his first FPOC membership, not the Credit Agreement being considered in this complaint. But given that the property being purchased on both occasions was in effect a very similar product, being marketed, sold and the finance brokered by the same Supplier, less than a year apart, I think it is likely that similar processes were followed in the arranging of the finance on both occasions. I think it is fair to assume that what happened during the second sale would have been broadly similar to what happened in the

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[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.

first, so I think it is safe for me to use Mr T's testimony around the first sale, as a guide to what happened at the second, to which this complaint relates.

But other than saying there were "no checks" and that "no counter signature was obtained" Mr T has not explained why the loan in question was unaffordable for him nor has he provided any information about his financial situation in the build up to Shawbrook's lending decision at the Time of Sale. So, when considering whether Shawbrook failed to lend to Mr T responsibly, even if I were to find that Shawbrook failed to do everything it should have when it agreed to lend to Mr T (and I am currently not minded to make such a finding), I'd have to be satisfied that the money lent to Mr T was unaffordable before also concluding that he lost out as a result.

Mr T has said that he is now unemployed, and the loan agreement is clearly unaffordable. And he wrote to Shawbrook in November 2016 to tell them he was out of work and wanted to reduce his monthly loan repayments to £20. I can see Shawbrook, in response, made some efforts to persuade Mr T to complete an income and expenditure assessment, but Mr T declined to do so. But in any case I've not seen anything which suggests this change of employment status was in any way foreseeable at the Time of Sale.

PL has made some general comments to our Service relating to the arrangement of credit by the Supplier, and said these are applicable to how Mr T's loan was arranged. But whilst these are general comments about the processes the Supplier used, and whether Shawbrook complied with its duties at the time when agreeing to provide finance, I have seen no evidence which leads me to think the loan was unaffordable for Mr T.

As I haven't seen anything to persuade me that the Credit Agreement was unaffordable to Mr T at the Time of Sale, I don't think this is a reason to uphold this complaint point given the circumstances.

Mr T says that no other available financial product was reviewed by the Supplier. But the Supplier wasn't acting as an agent of Mr T but as the supplier of contractual rights he obtained under the Purchase Agreement. And, in relation to the loan, it doesn't look like it was the Supplier's role to make impartial or disinterested recommendations or to give Mr T advice or information on that basis. It's also clear to me that Mr T knew he could fund his purchase by other means – having used a different loan provider for his first FPOC membership purchase. So, I'm not persuaded that Mr T's credit relationship with Shawbrook was rendered unfair for this reason given the facts and circumstances of this complaint.

<u>*Was the FPOC Membership sold as an investment*</u>

Mr T, in his Letter of Complaint, said that EU law had been breached by the Supplier during the sales process. That point was not expanded on initially to explain what law he thought had been breached and why.

However, PL has made it clear in response to the Investigator's view, that Mr T is complaining that the FPOC membership was sold as an investment. And, Mr T has said in his statement, in relation to the sale of his second FPOC membership (the subject of this complaint) "…that no vacation could be taken under that deal [the previous FPOC membership], and to rectify this situation, a new second agreement would be required to be signed. They advised there is nothing to be concerned about and stated with emphasis that the original contract would be superseded and it would be a better investment for us."

A complaint relating to the sale of a timeshare agreement as an investment is likely to relate to an alleged breach of Regulation 14(3) of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibit the Supplier from marketing or selling membership of the FPOC 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.”

As I’ve said above, the FPOC membership meant that Mr T could exchange his Fractional Points for holidays. But in addition to this, at the end of the projected membership term, he also had a share in the net sales proceeds of the Allocated Property tied to his membership. So Mr T’s share in the Allocated Property clearly constituted an investment in a share of the net sale proceeds of a specific property in a specific resort.

But the fact that the FPOC membership included an investment element did not, in itself, transgress the prohibition in Regulation 14(3). That prohibition prohibits the marketing and selling of a timeshare contract as an investment. It does not prohibit the mere existence of an investment element in a timeshare contract or the marketing and selling of such a product. In other words, the Timeshare Regulations did not ban the sale of products such as the FPOC, they just regulated how such products were sold.

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

But, other than the statement Mr T has submitted where Mr T has said he was told the second FPOC membership was a “better investment”, no other evidence has been submitted to indicate what was said by the Supplier. And looking at Mr T’s statement, this reference to a “better investment” appears to relate to his ability to take holidays. It seems to me likely that anything the Supplier said was in relation to the holidays he could take, rather than Mr T being able to generate a profit at the end of his membership term – after all the new arrangement entitled him to take two weeks every year, as opposed to one week every other year. And I cannot see Mr T’s statement makes any link to a potential financial gain for him which could be realised from the sale of the property. And it was only after the Investigator’s assessment, and after the judgment in Shawbrook & BPF v FOS was handed down, that Mr T appears to have recalled that the Supplier led him to believe that FPOC membership offered him the hope of a financial gain. I find it difficult to understand why an allegation that he was told by the Supplier that he would make more from FPOC membership than the amount he initially put in, was not made earlier to either Shawbrook or our Service if, in fact, that was what he was told by the Supplier.

In his initial letter of complaint to Shawbrook, Mr T gave details of both his initial FPOC membership purchase (the subject of a separate complaint) and the one to which this complaint refers. I have taken it all into account as I find it assists me in understanding what Mr T may have been told by the Supplier at the Time of Sale regarding the purpose of the FPOC membership.

Mr T said in his letter of complaint:

> *"July 2013 I was offered a self-catering weeks vacation via phone call for the cost of £124 at [the Supplier’s resort].*
>
> *During this telephone call I explicitly enquired IS THIS A TIME SHARE SELL/PITCH which they confirmed was most definitely not.”*

Mr T's recent letter goes on to say:

> *"13/10/2013 we took the offer up and flew to Fuengarola [sic]. On 17/10/2013 we were treated to a tour of their up market villas inferring that these would be offered in our purchase. This was followed by a trip to their office and a tiresome high sales pitch in which we endured a lengthy, rigorous onslaught from early afternoon till 9pm in the evening.* ***According to the sale person we were being sold an investment we would own a fraction of a property which could be sold at a later date for profit and this would then end our membership once sold.****" (emphasis my own)*

The corresponding paragraph in the Letter of Complaint reads:

> *"On 13/10/2013, Our Clients took the offer up and flew to Fuengarola. On 17/10/2013 Our Clients were treated to a tour of the Timeshare Owner's up-market villas inferring that these would be offered in Our Client's purchase. This was followed by a trip to the office of the Timeshare Owner and a tiresome high-pressure sales pitch in which Our Client endured a lengthy, rigorous onslaught from early afternoon until 9pm in the evening."*

The next paragraph in the Letter of Complaint reads:

> *"Worn out, tired and hungry, Our Client felt at that stage that his only option to escape from this dreadful and uncomfortable situation was to sign the agreement where the Timeshare Owner advised that they had purchased a share in a villa."*

Finally, in Mr T's recent letter it says:

> *"Worn out, tired and hungry, we felt at that stage our only option and escape, from this dreadful and uncomfortable situation, was to sign their agreement where they advised we had purchased a share on a villa* ***which was to be sold at a later date and we thought there is an end date and a profit at the end we was in hope it was all true."*** *(emphasis my own)*

The above was all in relation to Mr T's initial purchase of FPOC membership in 2013. In relation to his subsequent FPOC purchase, his letter of complaint said:

> *"In April 2014, Our Client took the Timeshare Owner up on their offer, where, again, they took Our Client on the same tour of the elaborate villas, then followed by the customary hard sales pitch, again into the evening. Determined not to fall for another scam, the representative of the Timeshare Owner informed Our Client that the initial sell in Fuengarola was miss-sold and worthless; no vacation could be taken under that deal and, to rectify this situation, a new second agreement would be required to be signed.*
>
> *The Timeshare Owner advised that there was nothing to be concerned about and stated, with emphasis, that the original contract would be superseded. This new financial agreement would be for £135.15 per month for 180 months. Now exhausted and mentally stressed. Our Clients signed this new contract. Again, on returning home it was apparent, and much to Our Client's dismay, that the initial contract was still active."*

In Mr T's recent letter to our Service he says:

> *"In April 2014 we took [the Supplier] up on their offer where again they took us on the same tour of elaborate villa's [sic] then followed by the customary hard sell pitch, again into the evening. Determined not to fall for another scam, the representative informed us that the initial sell [the first FPOC membership] was miss sold and worthless. That no*

> *vacation could be taken under that deal, and to rectify this situation, a new second agreement would be required to be signed. They advised there is nothing to be concerned about and stated with emphasis that the original contract would be superseded* ***and it would be a better investment for us.*** *This new financial agreement would be for £135.15 per month for 180 months. Now exhausted mentally stressed we signed this new contract. Again on returning home it was apparent and much to our dismay that the initial contract was still active." (emphasis my own)*

It is my view that these two letters are very similar, save for the additions in Mr T's recent letter that I have highlighted. So when Mr T first complained to Shawbrook he didn't make any mention or complaint that FPOC membership had been sold to him as an investment. It was only after our investigator's view, and after the outcome of Shawbrook & BPF v FOS that this was raised. I think that, had the sale taken place in the way now alleged, that would have been something Mr T relied on in his original complaint. Further, I place little weight on his recent recollections as I doubt his memory of the sale would have improved between his original complaint and his response to our investigator's view, and there is a real risk his memories have been influenced by the widespread reporting of the judgment in Shawbrook & BPF v FOS.

I am aware that some of the Supplier's training material, when taken with other oral representations during the sales presentation, might suggest in some circumstances that FPOC Membership was sold as an investment. But in my view, as the initial complaint is the best evidence I have of what Mr T remembers of his FPOC purchase, given the facts and circumstances of this complaint, and bearing in mind that I am making this decision on the balance of probabilities (i.e., what I consider most likely to have happened at the time), I'm not persuaded that the Supplier is likely to have breached the prohibition on selling timeshares as investments.

But even if I'm wrong to find in this complaint that the Supplier didn't breach Regulation 14(3) at the Time of Sale, I am not currently persuaded that makes a difference to the outcome in this complaint anyway. As the Supreme Court decision in Plevin makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. And it seems to me, that if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr T and Shawbrook that was unfair to him and warranted relief from that unfairness, whether or not the breach caused Mr T to enter into the FPOC Purchase Agreement and/or Credit Agreement is an important consideration.

Here, Mr T simply did not allege until after the judgment in Shawbrook & BPF v FOS was handed down that the Supplier led him to believe that FPOC membership would lead to a financial gain, inducing him to take out FPOC Membership. Yet that is something I would have expected to see him say if it was important to him or caused him to enter into the FPOC Purchase Agreement and/or the Credit Agreement. And in the absence of such an allegation, I find that I cannot say that the alleged breach of Regulation 14(3), even if true, was something that warrants relief given the circumstances of this complaint.

<u>*Was Mr T misled during the sale?*</u>

Mr T has said that he has been unable to make use of his FPOC membership due to the lack of available holidays when he has wanted to take them. But he has not provided any evidence to show what he was told, by whom and in what circumstances about availability, nor has he described the occasions on which he has tried to book but found he was unable to get what he expected. And as the Supplier says that Mr T has not made any attempt to

book any holidays using his FPOC membership, I haven't seen enough to persuade me that this, alone, rendered Mr T's credit relationship with Shawbrook unfair to him.

Mr T, in the Letter of Complaint, has said that during the second sales presentation he was told his first FPOC purchase was mis-sold and worthless, and to rectify this the second FPOC membership was needed. And he has repeated this in his statement to our Service. Mr T has said this was because he was told he would be unable to take a vacation under the first arrangement. And on the face of it, having looked at the terms of his first FPOC membership, if this is what Mr T was told, then this appears untrue and could have been a misrepresentation. I say this because under his initial FPOC membership it appears he was entitled to a one-week holiday every two years.

But the new FPOC membership allowed him to take a two-week holiday every year. Mr T hasn't provided any detail of what was said, and in what context, but I don't think it was likely that he was told he was unable to take any holidays under the first arrangement. I think he was probably sold the second FPOC membership on the basis that it provided him more holidays – after all he could take two weeks every year under the new membership when compared with the first, which only allowed for one one-week holiday to be taken every two years. I think this is most likely what he would have been told, and this was a fair description of how it worked. Further, it is very hard to understand why Mr T would have gone on to buy the second membership if he had just been told the membership he bought only six months earlier had been mis-sold to him. This is not something explained by Mr T in his evidence, and I think the more likely explanation is the more obvious one – that he simply bought a product that offered more holidays.

As a result of the evidence provided, on the balance of probabilities, I am not currently persuaded that Mr T was told, during the sales process to which this complaint concerns, that no vacation could be taken at all under the first FPOC membership. So I do not agree that it is likely that the Supplier made any actionable misrepresentations in this regard which rendered Mr T's credit relationship with Shawbrook unfair to him.

Conclusion

I am not currently persuaded, given the evidence and circumstances that I have seen, that Shawbrook was a party to a credit relationship with Mr T under the Credit Agreement that was unfair to him for the purposes of Section 140A CCA."

The further correspondence

Then, on 26 January 2026 I wrote to both Shawbrook and PL setting out my updated thoughts on the commission arrangement between Shawbrook and the Supplier that were in place at the Time of Sale, and what impact this arrangement had on Mr T's complaint. I said:

"As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 ('Hopcraft, Johnson and Wrench').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

i. *The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship…was unfair" (see paragraph 327);*
ii. *The failure to disclose the commission; and*
iii. *The concealment of the commercial tie between the car dealer and the lender.*

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. *The size of the commission as a proportion of the charge for credit;*
2. *The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);*
3. *The characteristics of the consumer;*
4. *The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and*
5. *Compliance with the regulatory rules.*

From my reading of the Supreme Court's judgment in Hopcraft, Johnson and Wrench, it sets out principles which apply to credit brokers other than car dealer–credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, Hopcraft, Johnson and Wrench is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think Hopcraft, Johnson and Wrench assists [Mr T] in arguing that his credit relationship with Shawbrook was unfair to him for reasons relating to commission given the facts and circumstances of this complaint.

I haven't seen anything to suggest that Shawbrook and the Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to [Mr T], nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led [Mr T] into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that Shawbrook and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But as I've said before, the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. And with that being the case, it isn't necessary to make a formal finding on that because, even if Shawbrook and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I don't currently think any such failure is itself a reason to find the credit relationship in question unfair to [Mr T].

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by Shawbrook to the Supplier for arranging the Credit Agreement that [Mr T] entered into wasn't high. At £854.90, it was only 9.91% of the amount borrowed and even less than that (5.42%) as a proportion of the charge for credit. So, had he known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, [Mr T] wanted FPOC membership and had no obvious means of his own to pay for it.

And at such a low level, the impact of commission on the cost of the credit he needed for a timeshare he wanted doesn't strike me as disproportionate. So, I think he would still have taken out the loan to fund his purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of [Mr T] but as the supplier of contractual rights he obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to him when arranging the Credit Agreement and thus a fiduciary duty.

Overall, therefore, I'm not currently persuaded that the commission arrangements between the Supplier and Shawbrook were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to [Mr T].

Section 140A: Conclusion

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between [Mr T] and Shawbrook under the Credit Agreement and related Purchase Agreement was unfair to him. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

Commission: The Alternative Grounds of Complaint

While I've found that [Mr T's] credit relationship with Shawbrook wasn't unfair to him for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to [Mr T's] complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

The first ground relates to whether Shawbrook is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from Shawbrook without telling [Mr T] (i.e., secretly).

And the second relates to Shawbrook's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed [Mr T] a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to him. And

while it's possible that Shawbrook failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on Shawbrook's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think he would still have taken out the loan to fund his purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

My provisional decision - commission

In conclusion, given the facts and circumstances of this complaint, I am not persuaded that Shawbrook was party to a credit relationship with [Mr T] under the Credit Agreement and related Purchase Agreement that was unfair to him 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 him."

So, in summary, I wasn't persuaded by any of the arguments put forward for why the credit relationship between Mr T and Shawbrook was unfair to him under Section 140A of the CCA. And I couldn't see any other reason why it would be fair or reasonable to direct Shawbrook to compensate Mr T – all of which led me to provisionally conclude that there was no basis on which to uphold the complaint.

The responses to the provisional decision

Shawbrook didn't respond to my provisional decision. PL disagreed with my overall conclusion. When doing that, it initially provided significant submissions but it went on to withdraw them and replace them with more concise submissions – which, while primarily concerned with the suggestion that Mr T's FPOC membership had been marketed and sold as an investment in contravention of a prohibition on selling timeshares in that way, included allegations of fraudulent misrepresentation on the basis that he was told by the Supplier at the Time of Sale that:

(1) He was buying part ownership of a physical property;
(2) FPOC membership was an investment;
(3) The Allocated Property would be sold; and
(4) He would receive a share of the net sales proceeds of sale when the Allocated Property is sold.

PL also repeated its concerns that Mr T had been mis-sold the FPOC membership; about the pressure Mr T was put under by the Supplier at the Time of Sale; and the payment of commission to the Supplier by Shawbrook – albeit with a focus on the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*.

As a result, the complaint was passed back to me for further thought and my Final Decision.

The Legal and Regulatory Context

The legal and regulatory context that I think is relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in previous correspondence with the parties. So, there's no need for me to set this out again in detail here. I simply remind the parties that our rules[2] say that in considering what is fair and reasonable in all the circumstances of the complaint, I will take into account: relevant (i) law

[2] Specifically Rule 3.6.4 in the Dispute Resolution Rules found in the Financial Conduct Authority's Handbook for Rules and Guidance.

and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (when appropriate), what I consider to have been good industry practice at the relevant time.

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.

And having done that afresh, I'm not persuaded to depart from my provisional decision for reasons I'll now explain.

Before I do, as I said in my provisional decision, my role as an Ombudsman is to decide what's fair and reasonable in the circumstances of this complaint – rather than address every single point that's been made. And with that being the case, while I have read all of PL's submissions in full, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it. It should also be noted that PL's initial complaint also included an allegation that Shawbrook's decision to lend to Mr T was irresponsible, and that he'd never been able to take a holiday using the membership – all of which I addressed in full in the PD. No further evidence has been submitted or arguments made on these points, so I see no reason to depart from my provisional findings, as set out above.

What's more, it is important to make the point that, in contrast to what might happen in court, neither side to this complaint has a burden of proof that it must discharge. After all, the jurisdiction under which I'm deciding this complaint is inquisitorial rather than adversarial – which means that my findings are made on the balance of probabilities, in light of the evidence and/or arguments from both sides.

So, while PL argues in response to my provisional decision that, under Section 140B(9) of the CCA, it is for Shawbrook to prove that its credit relationship with Mr T wasn't unfair simply because he alleges that it was, that fails to understand that the Financial Ombudsman Service deals with complaints rather than causes of action. And, in any event, to suggest that unsubstantiated allegations of fact must be disproved by Shawbrook if the credit relationship isn't to be deemed unfair also oversimplifies if not misunderstands the legal position. As HHJ David Cooke said in paragraph 26 of his judgment on *Promontoria (Henrico) Ltd v. Gurcharn Samra* [2019] EWHC 2327 (Ch):

"…the onus is on [the creditor] *to show, to the normal civil standard, that the relationship is not unfair because of any of the reasons set out in s 140A(1)(a)-(c). Whether it is so unfair is a matter for the court's overall judgment having regard to all the relevant circumstances and matters, including matters relating (i.e. personal) to the creditor and debtor. This onus on the claimant does not however mean, in my judgement…that where* [the borrower alleging an unfair credit relationship] *makes allegations of fact on which he relies he does not have the burden of proving them to the normal civil standard. The onus placed on the creditor is as to the relationship between it and the debtor, and does not have the effect that factual allegations made by Mr Samra must be accepted unless they can be positively disproved by contrary evidence."*[3]

[3] As approved by the Supreme Court in *Smith v. The Royal Bank of Scotland plc* [2023] UKSC 34 – see paragraph 40.

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

It has been argued by PL in response to the PD, that FPOC membership wasn't worth enough to make Mr T a profit and, as such, the following representations by the Supplier were fraudulent:

(1) He was buying part ownership of a physical property;

(2) FPOC membership was an investment;

(3) The Allocated Property would be sold; and

(4) He would receive a share of the net sales proceeds of sale when the Allocated Property is sold.

PL takes that view because it says the evidence suggests that (1) any rights in the Allocated Property are personal rights rather than the rights of ownership, (2) Shawbrook hasn't provided any evidence that the Allocated Property exists or that it will sell in the future (making it unlikely that Mr T will receive anything from his share in it) and, (3) by PL's own calculations, given the initial and ongoing costs of FPOC membership, it was never possible to make a profit from the sale of the Allocated Property.

The law relating to misrepresentation is a combination of the common law, equity and statute – though, as I understand it, the Misrepresentation Act 1967 didn't alter the rules as to what constitutes an effective misrepresentation. Summarising the relevant pages in *Chitty on Contracts*, a material and actionable misrepresentation is an untrue statement of existing fact or law made by one party (or his agent for the purposes of passing on the representation, acting within the scope of his authority) to another party that induced that party to enter into a contract.

However, a mere statement of opinion, rather than fact or law, which proves to be unfounded, isn't a misrepresentation unless the opinion amounts to a statement of fact and it can be proved that the person who gave it did not hold it or could not reasonably have held it. It also needs to be shown that the other party understood and relied on the implied factual misrepresentation.

Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue – nor was it untrue to tell prospective members that they would receive *some* money when the allocated property is sold.

After all, Mr T's share in the Allocated Property clearly constituted an investment as it offered him the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it.

But as PL knows, while the term "investment" is not defined in the Timeshare Regulations, it was agreed by the parties in *Shawbrook & BPF v FOS* that, by reference to the decided authorities, "*an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit*" (see paragraph 56).

Yet, contrary to what PL says, none of the contractual paperwork made any promises that a profit might be made.

As I said in my provisional decision, the Supplier's training material left open the possibility that the sales representative may have positioned FPOC membership as an investment. So, I accept that it's possible that FPOC membership was marketed and sold to Mr T as an investment orally.

But Mr T says little about what was said, by whom and in what circumstances for the purposes of determining whether representations by the Supplier amounted to false statements of existing fact rather than expressions of honestly held opinions about the likely value of the Allocated Property in the future. And while PL's own calculations might cast some doubt over the likelihood of the Allocated Property being sold at a profit given the initial and ongoing costs of it to Mr T, there isn't enough evidence to persuade me that the relevant sales representative(s) would have carried out that sort of calculation at the Time of Sale or would otherwise have had information that would indicate that they knew or ought reasonably to have known at the time that any such representations weren't true.

And while PL might question the exact legal mechanism used to give prospective members an interest in allocated properties, that does not change the fact that the shares of members (like Mr T) were clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort.

I'm not persuaded, therefore, by the allegations of fraudulent misrepresentation from PL. And with that being the case, they too aren't reasons to uphold this complaint and direct Shawbrook to compensate Mr T.

PL also maintains that the Supplier mis-sold the FPOC membership by saying that his original membership was worthless, and he had to buy this upgraded FPOC membership in order to rectify this. And Mr T has said in his statement that he was told by the Supplier, in relation to the sale of his second FPOC membership (the subject of this complaint) *"…that no vacation could be taken under that deal [the previous FPOC membership], and to rectify this situation, a new second agreement would be required to be signed. They advised there is nothing to be concerned about and stated with emphasis that the original contract would be superseded and it would be a better investment for us."*

As I set out in the PD, under the terms of Mr T's existing membership, he was entitled to take a 1-week holiday from the Supplier's range of accommodation every other year. But the new FPOC membership being considered here allowed him to take a two-week holiday every year. Mr T has not provided any detail of what was said, and in what context at the Time of Sale, but having reconsidered everything I still don't think it was likely that he was told he was unable to take any holidays under the first arrangement. I think he was probably sold the second FPOC membership on the basis that it provided him more holidays – after all he could take two weeks every year under the new membership when compared with the first, which only allowed for one one-week holiday to be taken every two years. I think this is most likely what he would have been told, and this was a fair description of how it worked, so I do not agree this was a misrepresentation.

As a result of the evidence provided, on the balance of probabilities, I remain unpersuaded that Mr T was told, during the sales process to which this complaint concerns, that no vacation could be taken at all under the first FPOC membership. So, I do not agree that it is likely that the Supplier made any actionable misrepresentations in this regard which rendered Mr T's credit relationship with Shawbrook unfair to him.

However, there are, of course, other reasons why PL argues that the credit relationship in question was unfair. But having reconsidered the entirety of that relationship along with everything that has now been said and/or provided by both sides, I still don't think the credit relationship between Mr T and Shawbrook was likely to have been rendered unfair to him for the purposes of Section 140A. When coming to that conclusion, I have looked at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;

2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;
3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; and
4. The inherent probabilities of the sale given its circumstances.

I have also reconsidered any commercial (including commission) arrangements between Shawbrook and the Supplier at the Time of Sale and the disclosure of those arrangements.

PL continues to argue that Mr T was pressured by the Supplier into purchasing FPOC membership at the Time of Sale. It says that Mr T sent it an email in April 2016 which it says shows that Mr T was taken on a tour of elaborate villas, followed by the customary hard sell pitch, again into the evening. He describes being exhausted and mentally stressed when he finally signed the contract. And as part of its PD response, it included a copy of a letter[4] (undated) from Mr T, which I will refer to as 'Letter B'. It is unclear if this is the April 2016 email PL is referring to, but this says, where relevant to the Time of Sale:

> *"This summary is not a full and final conclusion of events however does more importantly present an enlightening statement of the miss sold policies I have had to endure over the last 3 years.*
>
> *[…]*
>
> *In April 2014 we took them up on their offer where again they took us on the same tour of elaborate villa's, then followed by the customary hard sell pitch, again into the evening. Determined not to fall for another scam, the representative informed us that the initial sell in [sic] Fuengarola was miss sold and worthless. That no vacation could be taken under that deal, and to rectify this situation, a new second agreement would be required to be signed. They advised there is nothing to be concerned about and stated with emphasis that the original contract would be superseded.*
>
> *This new financial agreement would be for £135.15 per month for 180 months. Now exhausted mentally stressed we signed this new contract. Again on returning home it was apparent and much to our dismay that the initial contract was still active."*

But there is no new evidence in this letter – PL is just restating the initial complaint and saying it doesn't agree with my provisional outcome. And having reconsidered it, I see no reason to depart from my initial findings, set out in the extract of my provisional decision.

PL has said that Mr T's purchase of the second FPOC membership was not a willing upgrade, but a scheme engineered to extract a further financial commitment under the guise of fixing the initial product. But as I've set out above, I am not persuaded by the evidence that this is the case. I can see Mr T obtained a significant increase in holiday rights with his new purchase (two weeks annually as opposed to one week every other year).

So, on balance, I am not persuaded that the only, or main reason Mr T made his initial FPOC membership purchase was because he was unduly pressurised into doing so. So, I do not think Mr T's credit relationship with Shawbrook was rendered unfair under Section 140A of the CCA for reasons of undue pressure being placed on him at the Time of Sale.

But I'll turn now to what continues to be the main reason for PL's assertion that the credit relationship in question was unfair.

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[4] This Letter B will be discussed further later in this decision.

The Supplier's alleged breach of Regulation 14(3) of the Timeshare Regulations

In my PD I set out that I was not persuaded by the evidence that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale by selling and/or marketing the FPOC membership to Mr T as an investment – a view I still hold. I set out that this allegation was only made once the Investigator had given his reasons for not upholding the complaint, which was also after the judgement in *Shawbrook & BPF v FOS.*

PL, in response to the PD, did not agree with this. It said that the initial Letter of Complaint sent in 2016 was intentionally brief as it was complying with an instruction from a senior leader at the Financial Ombudsman Service, which had explicitly said that it was not necessary to submit anything other than the Service's complaint form when referring a complaint.

But I find what PL is saying here hard to understand. The instruction to which it is referring was given by this Service in 2018 – two years after this complaint was made and more than one year before it was referred to this Service, so its submission cannot have been affected by the instruction. And as I've said, PL made its complaint to Shawbrook in 2016 – this Letter of Complaint was made on Mr T's behalf, and set out why he thought his credit relationship with Shawbrook had been rendered unfair under Section 140A of the CCA. This Letter of Complaint makes no mention of the FPOC membership being sold as an investment, nor that this was a reason the credit relationship was rendered unfair to Mr T. It seems unlikely that if, as PL is now attesting, the FPOC membership had been sold in this way, and that this was important to Mr T and in his purchasing decision, this would not have been set out in the Letter of Complaint.

I also set out in the PD the apparent differences between a letter (which I will now refer to as 'Letter A') written by Mr T and what was set out in the Letter of Complaint. I highlighted that Mr T, in Letter A, had included the allegation that the membership had been sold as an investment. And I felt this was odd given Letter A was only submitted to this Service after the judgement in *Shawbrook & BPF v FOS.*

By way of background, two decisions of the Financial Ombudsman Service, upholding complaints, were challenged by way of judicial review in the High Court in *Shawbrook & BPF v FOS*. Here the Court considered two decisions concerning the sale of fractional timeshares similar to Mr T's, paid for with loans provided by Shawbrook Bank Ltd and Barclays Partner Finance. In each case, the ombudsman decided the timeshare package had been mis-sold because the membership had been sold as an investment, contrary to Regulation 14(3) of the Timeshare Regulations, and this breach had been material to the consumer's purchasing decision. The Ombudsmen said the contractual arrangement, including the associated loan, should be unwound as a result. Broadly, Shawbrook Bank Ltd and Barclays Partner Finance argued that the ombudsman had erred in law in each of the two decisions, but overall, the banks' claims were dismissed.

So, as I've said, Letter A was submitted in evidence to this Service by PL. This was following the Investigator's view that the complaint ought not to be upheld, and also after the judgement in *Shawbrook & BPF v FOS.* For clarity, I will set out the relevant parts of Letter A:

> "*This summary is not a full and final conclusion of events however does more importantly present an enlightening statement of the miss sold policies I have had to endure over the last 3 years.*
>
> *July 2013 I was offered a self-catering weeks vacation via phone call for the cost of £124 at [the Supplier's resort].*

During this telephone call I explicitly enquired IS THIS A TIME SHARE SELL/PITCH which they confirmed was most definitely not.

13/10/2013 we took the offer up and flew to [sic] Fuengarola. On 17/10/2013 we were treated to a tour of their up market villas inferring that these would be offered in our purchase. This was followed by a trip to their office and a tiresome high sales pitch in which we endured a lengthy, rigorous onslaught from early afternoon till 9pm in the evening. ***According to the sale person we were being sold an investment we would own a fraction of a property which could be sold at a later date for profit and this would then end our membership once sold.***

Worn out, tired and hungry, we felt at that stage our only option and escape, from this dreadful and uncomfortable situation, was to sign their agreement where they advised we had purchased a share on a villa ***which was to be sold at a later date and we thought there is an end date and a profit at the end we was in hope it was all true****.*

[…]

In April 2014 we took [the Supplier] up on their offer where again they took us on the same tour of elaborate [sic] villa's then followed by the customary hard sell pitch, again into the evening. Determined not to fall for another scam, the representative informed us that the initial sell [the first FPOC membership] was miss sold and worthless. That no vacation could be taken under that deal, and to rectify this situation, a new second agreement would be required to be signed. They advised there is nothing to be concerned about and stated with emphasis that the original contract would be superseded ***and it would be a better investment for us.***

This new financial agreement would be for £135.15 per month for 180 months. Now exhausted mentally stressed we signed this new contract. Again on returning home it was apparent and much to our dismay that the initial contract was still active." (emphasis my own)

In the PD I set out that had the sale taken place in the way now alleged in Letter A, I would have expected it would have been something Mr T would have relied on in his original complaint. Further, I felt I could place little weight on what was said in Letter A as I doubted his memory of the sale would have improved between his original complaint and his response to our Investigator's view, and there was a real risk his memories had been influenced by the widespread reporting of the judgment in *Shawbrook & BPF v FOS.* And I still hold that view now.

But following PL's submissions in response to the PD, I now have some additional concerns as to the reliability of what Mr T has said in Letter A. I'll explain.

Letter A was sent into this Service on 27 November 2023 by PL in support of its assertion that the FPOC membership had been sold to Mr T as an investment in breach of Regulation 14(3) of the Timeshare Regulations.

Following the PD, in PL's submissions on 9 March 2026, it included a copy of a letter from Mr T – Letter B. This reads:

"This summary is not a full and final conclusion of events however does more importantly present an enlightening statement of the miss sold policies I have had to endure over the last 3 years.

July 2013 I was offered a self catering weeks vacation via phone call for the cost of £124 at [the Supplier's resort].

During this telephone call I explicitly enquired IS THIS A TIME SHARE SELL/PITCH which they confirmed was most definitely not.

13/10/2013 we took the offer up and flew to [sic] Fuengarola. On 17/10/2013 we were treated to a tour of their up market villas inferring that these would be offered in our purchase. This was followed by a trip to their office and a tiresome high sales pitch in which we endured a lengthy, rigorous onslaught from early afternoon till 9pm in the evening.

Worn out, tired and hungry, we felt at that stage our only option and escape, from this dreadful and uncomfortable situation, was to sign their agreement where they advised we had purchased a share on a villa.

[…]

In April 2014 we took [the Supplier] up on their offer where again they took us on the same tour of elaborate [sic] villa's then followed by the customary hard sell pitch, again into the evening. Determined not to fall for another scam, the representative informed us that the initial sell [the first FPOC membership] was miss sold and worthless. That no vacation could be taken under that deal, and to rectify this situation, a new second agreement would be required to be signed. They advised there is nothing to be concerned about and stated with emphasis that the original contract would be superseded.

This new financial agreement would be for £135.15 per month for 180 months. Now exhausted mentally stressed we signed this new contract. Again on returning home it was apparent and much to our dismay that the initial contract was still active."

When Letter B is compared to the text of Letter A, which was submitted following the Investigator's view, it is clear that Letter A has additional text (highlighted in bold above) contained within it. It seems that the letter submitted by PL following the PD (Letter B) was likely to have been the original letter sent by Mr T, prior to the additions. And given that the wording in Letter B was very similar to that contained in the Letter of Complaint to Shawbrook, I think it likely that Letter B was used to inform that Letter of Complaint.

It appears likely that the additional sentences in Letter A –

*"**According to the sale person we were being sold an investment we would own a fraction of a property which could be sold at a later date for profit and this would then end our membership once sold**";*

***"…which was to be sold at a later date and we thought there is an end date and a profit at the end we was in hope it was all true"**; and*

"…and it would be a better investment for us."

– were added after the Letter of Complaint was sent. And given that Letter A was not submitted to this Service until after the judgement in *Shawbrook & BPF v FOS,* and because the apparent additions relate purely to the investment allegation, I do not feel able to place any weight on what it says.

Therefore, having reconsidered everything that has been submitted, I think the initial complaint, which was probably informed by Letter B, is the best evidence I have of what Mr T remembers of his FPOC purchase at the Time of Sale given the facts and circumstances of this complaint. Bearing in mind that I am making this decision on the balance of probabilities (i.e., what I consider most likely to have happened at the time), I'm not persuaded that the Supplier is likely to have breached the prohibition on selling timeshares as investments.

But, like I did in the PD, I have considered the possibility that I am wrong here. I have thought about whether, if the Supplier *did* sell the FPOC membership to Mr T as an investment, that would make a difference to the outcome of this complaint. And I don't think it does, because a breach of Regulation 14(3) by the Supplier is not itself determinative of the outcome in this complaint unless the impact of such a breach suggested otherwise.

I think this because, on my reading of *Shawbrook & BPF v FOS*, Mrs Justice Collins Rice didn't find that a breach of Regulation14(3) of the Timeshare Regulations was *"causative of the legal relations entered into"*. She recognised that such a breach was *"conduct that knocks away the central consumer protection safeguard"*, but she went on to say that it was the ombudsmen behind the two reviewed decisions who found that such a breach was, given the facts and circumstances of the relevant complaints, causative of the consumers in question purchasing their timeshares and taking out loans to do so.

What's more, the Supreme Court's judgment in *Plevin* makes it clear that regulatory breaches do not automatically create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

I am also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in *Carney v NM Rothschild & Sons Ltd* [2018] EWHC 958 ('*Carney*') and *Kerrigan v Elevate Credit International Ltd* [2020] EWHC 2169 (Comm) ('*Kerrigan*') (respectively) on causation.

In *Carney*, HHJ Waksman QC said the following in paragraph 51:

"[…] In cases of wrong advice and misrepresentation, it would be odd if any relief could be considered if they did not have at least some material impact on the debtor when deciding whether or not to enter the agreement. […] in a case like the one before me, if in fact the debtors would have entered into the agreement in any event, this must surely count against a finding of unfair relationship under s140A. […]"

And in *Kerrigan*, HHJ Worster said this in paragraphs 213 and 214:

"[…] The terms of section 140A(1) CCA do not impose a requirement of "causation" in the sense that the debtor must show that a breach caused a loss for an award of substantial damages to be made. The focus is on the unfairness of the relationship, and the court's approach to the granting of relief is informed by that, rather than by a demonstration that a particular act caused a particular loss. Section 140A(1) provides only that the court ***may*** *make an order* ***if*** *it determines that the relationship is unfair to the debtor. […]*

[…] There is a link between (i) the failings of the creditor which lead to the unfairness in the relationship, (ii) the unfairness itself, and (iii) the relief. It is not to be analysed in the sort of linear terms which arise when considering causation proper. The court is to have regard to all the relevant circumstances when determining whether the relationship is unfair, and the same sort of approach applies when considering what relief is required to remedy that unfairness. […]"

So, it still seems to me that if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr T and Shawbrook that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

Indeed, doing that accords with common sense, for if events would have unfolded in the same way whether or not such a pre-contractual breach had occurred, it would be difficult to

attribute any particular importance to the breach when deciding whether an unfair debtor-creditor relationship ensued, or whether a remedy is appropriate.

If there had been a breach of Regulation 14(3), would it have rendered the credit relationship between Mr T and Shawbrook unfair to him?

If, as PL asserts, the Supplier did indeed breach Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I have gone on to consider (as I did in my provisional decision) what impact that breach (if there was one) would have likely had on the fairness of the credit relationship between Mr T and Shawbrook under the Credit Agreement and related Purchase Agreement.

And on my re-reading of the evidence before me, I'm still not persuaded that the prospect of a financial gain from FPOC membership was an important and motivating factor when Mr T decided to go ahead with his purchase, such that he would have made an entirely different purchasing decision had there not been a breach of Regulation 14(3). And I say that because Mr T simply did not allege until after the judgment in *Shawbrook & BPF v FOS* was handed down, that the Supplier led him to believe that FPOC membership would lead to a financial gain, inducing him to take out FPOC membership. Yet that is something I would have expected to see him say if it was important to him or caused him to enter into the FPOC Purchase Agreement and/or the Credit Agreement.

PL has also set out that the overall cost of the FPOC membership, when including the cost of the credit and the annual maintenance fees over its duration, was actually in excess of £30,000. And it says this means that a single annual holiday using the membership actually costs Mr T over £2,000. It says that no rational consumer would agree to such an excessive liability without the Supplier's promise of a financial return upon the sale of the Allocated Property.

But I don't agree with the PR that this is conclusive evidence the membership was sold as an investment. If that was the case, I would have expected Mr T to have said this at the outset of his complaint. And, for all of the reasons set out above, I am not persuaded that he did so.

As I've said, Mr T obtained a significant increase in holiday rights over his existing membership when he purchased the FPOC at the Time of Sale. It is these holiday rights that I think are the most likely reason for his purchase.

So, in the initial absence of such an investment allegation, and having considered everything that has been submitted, I find that I cannot say that an alleged breach of Regulation 14(3), even if true, was something that warrants relief given the circumstances of this complaint.

On balance, therefore, for the reasons I've set out above, I don't think the credit relationship between Mr T and Shawbrook was unfair to him even if the Supplier had breached Regulation 14(3).

The provision of information by the Supplier at the Time of Sale

As I've already said, I set out my thoughts in relation to the implications of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench* for this complaint on 26 January 2026. I remain satisfied that Shawbrook has provided me with sufficient information to reach a conclusion about its commercial (including commission) arrangements with the Supplier. I've seen nothing in this case that leads me to think that the information in question is inaccurate. And while I recognise that PL might disagree with the thoughts I shared on 26 January 2026, it hasn't offered any evidence and/or arguments that lead me to think that (1) the factors

referenced by the Supreme Court have a bearing on the outcome of this complaint given its circumstances or (2) there are any other reasons why the commercial (including commission) arrangements between the Supplier and Shawbrook rendered the credit relationship between the latter and Mr T under the Credit Agreement and related FPOC Purchase Agreement unfair for the purposes of Section 140A.

In response to my provisional decision, PL continues to argue that the Supplier breached the CPUTR (which concerns misleading omissions) because it failed to provide Mr T with information on the market value of the Allocated Property, title deeds and a proper legal description beyond a basic unit number.

However, it isn't clear what PL means by "proper legal description" and has provided no authority for the suggestion the Supplier had to provide Mr T with information on the title deeds of the Allocated Property. What's more, when it comes to the market value of the Allocated Property, I would draw PL's attention to what Mrs Justice Collins Rice said in paragraphs 106 and 110 of her judgment in *Shawbrook & BPF v FOS:*

"Both ombudsmen rely on the reference in Sch.1 to 'exact nature and content of the rights' as being the basis for perceiving a legal obligation to provide 'value' information. But first, having regard to the high level of specificity in the Schedule, ***it is obvious that 'value' information is nowhere specified as such. And second, 'exact nature and content of the rights' is clearly intended, in context, to be a fair and objective identification and description of those rights. 'Value' information may possibly be context for, or commentary on, those rights, but the 'exact nature and content of rights' is something different from information which may (or may not) be relevant to how much they might be worth, now or in the future.****"*

"I do not, and do not need to, go so far as to infer from the Regulations a legal prohibition on the provision of valuation information. ***My conclusion is that there is no legal obligation, derivable from Reg.12 of the Timeshare Regulations, to provide it,*** *and that the ombudsmen's solution is, in its own terms, distinctly problematic for the regulatory framework. It remains my view that the principal legal consumer-protection control over buying and selling fractional ownership timeshares is the Reg.14(3) prohibition. That provision alone makes it hard enough to market a timeshare product containing a bare interest in the proceeds of the deferred sale of real property lawfully, without inviting the fleshing out of the law as positively demanding investor-protection information obligations at the same time."* (My emphasis added)

In any event, as I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

So, even if it could be said that the Supplier failed to give Mr T information, in good time, in order to satisfy the CPUTR for some of the reasons PL gives, neither he nor PL have persuaded me that he was deprived of information that would have led him to make a different purchasing decision at the Time of Sale when I've already found that the prospect of a financial gain from the sale of the Allocated Property was not an important and motivating factor behind his purchase. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why that could be said to have rendered the credit relationship in question unfair to him.

Conclusion

Having adopted my provisional findings, and having reconsidered the facts and

circumstances of this complaint, I'm still not persuaded that Shawbrook was party to a credit relationship with Mr T that was unfair to him 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 for me to direct Shawbrook to compensate Mr T.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 May 2026.

Chris Riggs
Ombudsman