DRN-5231023

The complaint

Mr and Mrs C's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

What happened

Mr and Mrs C were existing members of a timeshare (the 'Fractional Club') which they had bought from a timeshare provider (the 'Supplier') in September 2014.

The Fractional Club was asset-backed, which meant it gave Mr and Mrs C more than just holiday rights. It also meant they were entitled to a share in the net sales proceeds of a property named on their purchase agreement when their membership term ends. But they had no rights to stay in this specific property, or to use it in any other way.

This membership cost them £16,349 and was paid for by Mr and Mrs C taking finance from the Lender for the full amount. A complaint about this purchase and the associated credit agreement is being considered in a separate decision and is included here for background information only.

On 27 April 2015, whilst on a holiday as part of their Fractional Club membership, Mr and Mrs C attended a sales meeting with the Supplier (the 'Time of Sale'). At this meeting they traded in their Fractional Club membership towards the cost of a new timeshare (the 'Signature Collection') from the Supplier. They agreed to purchase 1,480 fractional points (the 'Purchase Agreement') at a cost of £27,926. But after trading in their existing membership, they ended up paying £12,326 for the Signature Collection membership.

Like the Fractional Club, the Signature Collection membership was also asset-backed, meaning Mr and Mrs C were entitled to a share in the net sales proceeds of the specific property named in their Purchase Agreement (the 'Allocated Property') when their membership term ends. But, unlike their previous arrangement, the Signature Collection gave them a guaranteed week's accommodation in the Allocated Property.

Mr and Mrs C paid for their Signature Collection membership by taking finance of £28,858 from the Lender in their joint names (the 'Credit Agreement'). This loan consolidated the outstanding balance from their previous credit agreement with the Lender. Mr and Mrs C settled the balance of this Credit Agreement on 22 July 2015.

Mr and Mrs C – using a professional representative (the 'PR') – wrote to the Lender on 15 January 2019 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

In the Letter of Complaint Mr and Mrs C say that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

- Assured them there would be a high level of availability which was not true.
- Told them that Fractional Club membership was an "investment" when that was not true.
- Told them that the Supplier's holiday resorts were exclusive to its members when that was not true.
- Told them that the sale of the Allocated Property would be fast, easy and profitable when this was not true.

Mr and Mrs C say that they have a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, they have a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr and Mrs C.

Section 140A of the CCA: the Lender's participation in an unfair credit relationship

The Letter of Complaint set out several reasons why Mr and Mrs C say that the credit relationship between them and the Lender was unfair to them under Section 140A of the CCA. In summary, they include the following:

- The misrepresentations as set out above.
- The Supplier misrepresented the true nature of the long-term holiday product.
- They were pressured into purchasing Fractional Club membership by the Supplier.
- The Supplier failed to deliver on the assurances it gave during the sale.
- The Supplier failed to act in Mr and Mrs C's best interests
- The Supplier failed to ensure compliance and due diligence.
- The Supplier failed in its duty of care towards Mr and Mrs C.

The Lender did not send Mr and Mrs C a response to their complaint within the eight weeks required by the Regulator, so the PR referred their complaint to the Financial Ombudsman Service.

The Lender, having looked into Mr and Mrs C's complaint, sent them its final response on 6 November 2019 rejecting it on every count. Unhappy with this outcome Mr and Mrs C, who by this time were no longer represented by the PR, asked for our Service to consider their complaint.

It was assessed by an Investigator at this Service who, having considered the information on file, rejected the complaint on its merits.

Mr and Mrs C disagreed with the Investigator's assessment, and on 9 May 2024, provided a written account, in the name of Mrs C, setting out her recollections of their entire relationship with the Supplier and the Lender.

And having considered this, and having reviewed the information already held on file, the Investigator changed her opinion. She thought that the Supplier had sold and/or marketed the Fractional Club to Mr and Mrs C as an investment, in breach of Regulation 14(3) of the

Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'). And she thought that breach caused the resulting Credit Agreement and related Purchase agreement to be unfair to Mr and Mrs C under Section 140A of the CCA. The Investigator then set out how she thought the Lender should calculate and pay compensation to Mr and Mrs C.

The Lender disagreed with the Investigator's most recent view, and asked for an Ombudsman's decision – which is why it was passed to me.

Having considered everything, I didn't agree with the Investigator's most recent finding. I didn't think Mr and Mrs C's complaint ought to be upheld, so I set out my initial thoughts in a Provisional Decision (the 'PD'). In my PD I began by setting out the legal and regulatory context:

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

I will refer to and set out several regulatory requirements, legal concepts and guidance in this decision, but I am satisfied that of particular relevance to this complaint is:

- *The CCA (including Section 75 and Sections 140A-140C).*
- *The law on misrepresentation.*
- *The Timeshare Regulations.*
- *The Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR')*
- *The Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT').*
- *Case law on Section 140A of the CCA – including, in particular:*
    - *The Supreme Court's judgment in Plevin v Paragon Personal Finance Ltd [2014] UKSC 61 ('Plevin') (which remains the leading case in this area).*
    - *Scotland v British Credit Trust [2014] EWCA Civ 790 ('Scotland and Reast')*
    - *Patel v Patel [2009] EWHC 3264 (QB) ('Patel').*
    - *The Supreme Court's judgment in Smith v Royal Bank of Scotland Plc [2023] UKSC 34 ('Smith').*
    - *Carney v NM Rothschild & Sons Ltd [2018] EWHC 958 ('Carney').*
    - *Kerrigan v Elevate Credit International Ltd [2020] EWHC 2169 (Comm) ('Kerrigan').*
    - *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS').*

Good industry practice – the RDO Code

The Timeshare Regulations provided a regulatory framework. But as the parties to this complaint already know, I am also required to take into account, when appropriate, what I consider to have been good industry practice at the relevant time – which, in this complaint, includes the Resort Development Organisation's Code of Conduct dated 1 January 2010

(the 'RDO Code')."

I then went on to set out my provisional thoughts on the merits of Mr and Mrs C's complaint:

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, I do not currently think this complaint should be upheld. I understand that this will come as a disappointment to Mr and Mrs C, and I'm sorry about that. I also want to explain that this provisional decision will read in quite a similar way to the provisional decision regarding their other complaint. This is because the arguments and complaint points raised are similar, if not identical, so it follows that my decision, whilst being based both on the evidence provided and the wider circumstances, will naturally also follow the same pattern.

And also, before I explain why I have come to the provisional decision that I have, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I haven't considered it.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against the Lender under Section 75 of the CCA essentially mirrors the claim Mr and Mrs C could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mr and Mrs C at the Time of Sale, the Lender is also liable.

This part of the complaint was made for several reasons that I set out at the start of this decision. They include that the Supplier told them there would be a high level of availability, and that the Supplier's resorts were exclusive to members, both of which Mr and Mrs C say are untrue.

In addition to what has been said regarding this in the Letter of Complaint, Mrs C has said in her statement that the Supplier reassured them at the Time of Sale that the Signature Collection level of membership was exclusively for members only. But I cannot see that this was actually untrue. The apartments allocated to the Signature Collection were for the use of its members, and I've not seen anything which suggests that they were available to book anywhere else. I am aware from other complaints which have been dealt with by our Service that some unassigned units were available to book, but these weren't Signature Collection apartments, they were other units in the resorts.

Mrs C has also said that availability was not as promised, but again, from the evidence I've seen I am not persuaded that this was the case. Mrs C hasn't said what she was promised in this regard, by whom and when. And as I said, Signature Collection membership offered a guaranteed week's accommodation, and it seems that Mr and Mrs C have taken six holidays between 2016 and 2019 using their Signature Collection membership.

Mr and Mrs C also state that the Signature Collection was sold to them as an investment, when this was not the case. I will address this point further below, but had they been told that their Signature Collection was an investment (and I make no finding on that point here), that would not have been untrue.

Lastly, Mr and Mrs C state they were told that the sale of the Allocated Property would be "…fast, easy and profitable." There is no mention in the statement of what they were told in this regard, and it is not clear which timeshare sale this related to, or whether it was both the Fractional Club and Signature Collection. However, I cannot see how this could be a misrepresentation, as it is talking about something that would happen in the future, and has not yet occurred. So, I fail to see how Mr and Mrs C could suggest what they were told is untrue.

As there's nothing else on file that persuades me there were any false statements of existing fact made to Mr and Mrs C by the Supplier at the Time of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reasons they allege.

For these reasons, therefore, I do not think the Lender is liable to pay Mr and Mrs C any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

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

I have already explained why I am not persuaded that the contract entered into by Mr and Mrs C was misrepresented by the Supplier in a way that makes for a successful claim under Section 75 of the CCA and outcome in this complaint. But Mr and Mrs C also say that the credit relationship between them and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time of Sale that they have concerns about. It is those concerns that I explore here.

As Section 140A of the CCA is relevant law, I do have to consider it. So, in determining what is fair and reasonable in all the circumstances of the case, I will consider whether the credit relationship between Mr and Mrs C and the Lender was unfair.

Under Section 140A of the CCA, a debtor-creditor relationship, like the one between the Lender and Mr and Mrs C, can be found to have been or be unfair to the debtor (Mr and Mrs C) because of one or more of the following: the terms of the credit agreement itself; how the creditor exercised or enforced its rights under the agreement; and any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement) (s.140A(1) CCA).

Such a finding of unfairness may also be based on the terms of any related agreement (which here, includes the Purchase Agreement) and, when combined with Section 56 of the CCA, on anything done or not done by the supplier on the creditor's behalf before the making of the credit agreement or any related agreement.

The Lender doesn't dispute that there was a pre-existing arrangement between it and the Supplier. So, the negotiations conducted by the Supplier during the sale of Mr and Mrs C's membership of the Signature Collection were conducted in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement as defined by Section 12(b). So they were what is known as antecedent negotiations under Section 56(1)(c) – so they were conducted by the Supplier as an agent for the Lender as per Section 56(2). And such antecedent negotiations were "any other thing done (or not done) by, or on behalf of, the creditor" under s.140(1)(c) CCA.

So, this means that the Supplier is deemed to be the Lender's statutory agent for the purpose of the pre-contractual negotiations.

However, an assessment of unfairness under Section 140A isn't limited to what happened immediately before or at the time a credit agreement and related agreement were entered into. It needs to take into account the entirety of the credit relationship, which in this case, is up to the point the Credit Agreement was cleared on 22 July 2015.

So, I have considered the entirety of the credit relationship between Mr and Mrs C and the Lender, along with all of the circumstances of the complaint. In carrying out my analysis, and in coming to my conclusion, I have looked at:

1. *The Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale;*
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 then considered the impact of these on the fairness of the credit relationship between Mr and Mrs C and the Lender. And having done that, I do not think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. I'll explain.

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

Mr and Mrs C's complaint about the Lender being party to an unfair credit relationship was made for several reasons, all of which I set out at the start of this decision.

They include the allegation that the Supplier misled Mr and Mrs C and carried on unfair commercial practices which were prohibited (although not set out in these exact terms, these would relate to the CPUT Regulations) for the same reasons they gave for their Section 75 claim for misrepresentation. But given the limited evidence in this complaint, as I set out in the Section 75 section above, I am not persuaded that anything done or not done by the Supplier was prohibited under the CPUT Regulations.

In the Letter of Complaint Mr and Mrs C say that they were pressured by the Supplier into purchasing the Signature Collection membership at the Time of Sale. But having considered what Mrs C has said in her statement in this regard, I'm not persuaded that this was the case. The only mention she makes of the conditions surrounding the sale is they were there for a very long time. I acknowledge that they may have felt weary after a sales process that went on for a long time. But Mrs C says nothing about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Signature Collection membership when they simply did not want to, as alleged in

their Letter of Complaint. So, there is insufficient evidence to demonstrate that Mr and Mrs C made the decision to purchase Signature Collection membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

In the Letter of Complaint Mr and Mrs C also set out some other reasons which they say caused them unfairness. Those being that the Supplier failed to deliver on the assurances it had given, failed to act in their best interests and with a duty of care, and had failed to ensure compliance and due diligence. But other than these general statements, they have provided no evidence to support them, nor even to say how these caused an unfairness in their credit relationship with the Lender. And having looked at everything that has been said and provided, I cannot see any evidence to support that unfairness was caused for these reasons.

I'm not persuaded, therefore, that Mr and Mrs C's credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why they say their credit relationship with the Lender was unfair to them. And that's the suggestion that Signature Collection membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

Was Signature Collection membership marketed and sold at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations?

The Lender does not dispute, and I am satisfied, that Mr and Mrs C's Signature Collection membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations. It was not, as set out in the Letter of Complaint, a long-term holiday product, as it provided Mr and Mrs C with the rights to more than one period of overnight holiday accommodation, for a term of more than one year.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling membership of the Signature Collection as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But the PR, in the Letter of Complaint, says that the Supplier did exactly that at the Time of Sale. And Mrs C has repeated that in her statement. So, that is what I have considered next.

The term "investment" is not defined in the Timeshare Regulations. In Shawbrook & BPF v FOS, the parties agreed that "an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit". I will use the same definition.

Mr and Mrs C's share in the Allocated Property clearly, in my view, constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But the fact that Signature Collection membership included an investment element did not, itself, transgress 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 prohibit the marketing and selling of such a timeshare contract per se.

In other words, the Timeshare Regulations did not ban products such as the Signature Collection. They just regulated how such products were marketed and sold.

So, for me to conclude that Signature Collection membership was marketed or sold to Mr and Mrs C in a way that breached Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Signature Collection membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

Although it has not been provided in this case, I have seen evidence in the form of the sales documentation relating to other similar complaints considered by this Service, about the sale of Signature Collection at very similar times to this sale. And in the standard sales and membership documentation that I think would most likely have been provided to Mr and Mrs C at the Time of Sale, I can see that the Supplier made efforts to avoid specifically describing membership of the Signature Collection as an 'investment', or quantifying to prospective purchasers, such as Mr and Mrs C, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. There were, for instance, disclaimers in the standard paperwork that related to sales of this kind, that state that Signature Collection membership was not sold to customers as an investment.

However, with all of that said, I also acknowledge that the Supplier's training material, which has also been provided to this Service in relation to other complaints, left open the possibility that the sales representative may have positioned Signature Collection membership as an investment. So I accept that it's possible that Signature Collection membership was marketed and sold to them as an investment in breach of Regulation 14(3) given the difficulty the Supplier was likely to have had in presenting a share in the net sales proceeds of the Allocated Property as an important feature of Signature Collection membership without breaching the relevant prohibition.

But given the circumstances of this complaint, I do not think it is necessary for me to make a finding on whether Signature Collection membership was likely to have been sold in breach of Regulation 14(3) of the Timeshare Regulations. I think this because I am not currently persuaded that would make a difference to the outcome in this complaint anyway.

Was the credit relationship between the Lender and Mr and Mrs C rendered unfair?

There has been a significant amount of case law in this area, and I have to take it all into consideration here. For example, as the Supreme Court's judgment in Plevin makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A.

So what does that mean for the complaint I am considering here? If I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs C and the Lender that was unfair to them and warranted relief (for example compensation) as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

As I've said, it is possible that the Supplier did in fact breach Regulation 14(3) of the Timeshare Regulations by marketing and/or selling the Signature Collection to Mr and Mrs C as an investment. But in order to find that this has caused an unfairness to their credit relationship with the Lender, I need to think that this breach was a material factor in their purchasing decision.

Mr and Mrs C were already members of one of the Supplier's timeshares, and went to a meeting with the sales team to discuss their membership. Mrs C has said in her statement that they weren't very happy with the standard of accommodation they were getting with their existing Fractional Club membership, and that it was not of the luxurious nature that they

had been told it would be. Having told the Supplier this, she says the sales representative introduced them to a new level of accommodation (the Signature Collection) which would work much better for them.

So, on my reading of this, at the Time of Sale Mr and Mrs C weren't happy with the quality of the accommodation they were getting from their Fractional Club membership. And the sales representative said this could be solved by them purchasing membership of the Signature Collection. So this, initially at least, seems to have been their motivation to make the purchase.

Mrs C then goes on to describe in her statement how much the Signature Collection would cost to purchase, and what they would pay monthly under the Credit Agreement. She also says she trusted that the Supplier had their best interests in mind and wanted to provide them with the high quality accommodation they had been promised. So again, the quality of the accommodation seems to be the primary motivation here.

It is only after this that Mrs C says in her statement:

> *"We were informed that the purchase would be an investment to which we would see a profit when the properties were sold in 19 years time. We believed and were informed that we owned a fraction of the property and that the house prices in Spain although had fluctuated they generally were performing similar to those in the UK doubling every 8-10 years."*

But there is nothing in this which leads me to think this was a reason for them making the purchase. Mrs C is describing what she says she was told. But as I've said, they went into the meeting dissatisfied with the quality of the accommodation they were getting, and the Signature Collection was pitched to them as something that would solve this issue.

So on my reading of what happened, and of what Mrs C has said in her statement, I think Mr and Mrs C were motivated to purchase the Signature Collection because they were dissatisfied with what they were getting with Fractional Club, and this was a way to improve the quality of the accommodation that they would stay in during their holidays.

And my view on this is strengthened when I consider the reasons Mrs C has given for her dissatisfaction with the Signature Collection membership. She said she found a non-member colleague who was able to book accommodation in a resort that she had been told was full. This made her feel totally let down by the Supplier and on the next holiday spoke to the sales team again to say she wanted to exit their membership. I find it hard to see how Mr and Mrs C would have been motivated to buy the Signature Collection membership in the first place as an investment, and then wanted to exit that membership, thereby foregoing any investment element, due to accommodation availability.

On balance, therefore, even if the Supplier had marketed or sold the Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs C's decision to purchase Signature Collection membership at the Time of Sale was motivated by the prospect of a financial gain. On the contrary, I think the evidence suggests they would have pressed ahead with their purchase in order to access more luxurious holiday accommodation, whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr and Mrs C and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

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

It is clear from the submissions of everyone involved in this complaint that there was a lot of information passed between the Supplier and Mr and Mrs C when they purchased membership of the Signature Collection at the Time of Sale. But Mrs C and the PR say that the Supplier failed to provide them with all of the information they needed to make an informed decision.

This includes Mrs C saying they were never informed that they had a 'cooling off' period following the sale. I assume Mrs C is referring here to the 14-day period following the purchase during which time they could change their mind and withdraw from the purchase and credit agreement without penalty. But I'm not convinced that they weren't told about this right. I say this because I have seen a copy of the "Separate Standard Withdrawal Form To Facilitate The Right Of Withdrawal" which explains that they have the right to withdraw from the contract within 14 calendar days without giving reason. This form is signed as having been received, and the two signatures appear very similar to the other signatures relating to the purchase and credit agreement. So on balance I think it is likely that the signatures on the withdrawal form belong to Mr and Mrs C, and as such I am persuaded that they were given the form, and it was likely that it was explained to them.

It is possible that Mrs C is saying that they did not have time to think about the purchase because the Supplier said that particular deal had to be made on the day. But that is different to the 14-day cancellation period, and as long as that is in place, there is nothing wrong with the Supplier offering on-the-day incentives.

Mrs C also says that when the finance was arranged, they were never explicitly told what the interest cost would be, nor were they asked whether it would be affordable. There are two issues here that I need to explore. The first is whether Mr and Mrs C were given sufficient information in relation to the Credit Agreement.

I have seen a copy of the Credit Agreement, signed and dated by Mr and Mrs C on 27 April 2015. This sets out the total cost of the credit over the term of the agreement, and the APR. So while the Supplier may not have actually told them these details verbally, they had this information written down and given to them.

Although not set out in the Letter of Complaint, Mrs C says in her statement that the Supplier never asked if the Credit Agreement was affordable for them. This is suggesting to me that the Supplier, as the credit broker for the Lender, didn't do everything that Mrs C thinks it was required to do in this regard. It could also be suggesting that the Lender was also negligent here in its decision to provide the loan.

As I've said, I have seen a copy of the Credit Agreement which sets out the terms and required repayments. But even if I were to find that the Supplier, in brokering the agreement, or the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs C was actually unaffordable, before also concluding that they lost out as a result, and then consider whether the credit relationship with the Lender was unfair to them for this reason. Again, from the information provided, I am not satisfied that the lending was unaffordable for Mr and Mrs C, and I can see that they paid off the entirety of the loan within three months of the agreement.

Section 140A: Conclusion

In conclusion, therefore, given all of the facts and circumstances of this complaint, I don't think the credit relationship between the Lender and Mr and Mrs C was unfair to them for the purposes of Section 140A. And taking everything into account, I think it's fair and reasonable to reject this aspect of the complaint on that basis.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I currently do not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs C's Section 75 claim, and I am not currently persuaded that the Lender 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 the Lender to compensate Mr and Mrs C.

If there is any further information on this complaint that Mr and Mrs C wish to provide, I would invite them to do so in response to this provisional decision."

Neither the Lender nor Mr and Mrs C provided any further evidence or arguments in response to my PD. As the deadline for them to respond has now passed the complaint has come back to me to reconsider.

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.

As no further evidence or argument has been submitted by either party to this complaint, and having considered everything afresh, I see no reason to depart from my provisional findings as set out above.

My final decision

I do not uphold Mr and Mrs C's complaint against Shawbrook Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 27 January 2025.

Chris Riggs
Ombudsman