

The complaint

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

What happened

On or around 9 September 2008 (the 'Time of Sale'), Mr and Mrs W met with a timeshare provider (the 'Supplier') whereupon they agreed to purchase a timeshare product (the 'Timeshare') incorporating 1,000 points rights to be used to book holiday accommodation and experiences from a portfolio of resorts offered through the Supplier. The purchase price agreed was £12,699 (the 'Purchase Agreement').

Mr and Mrs W paid for the Timeshare by taking finance for the full purchase price under a regulated loan agreement (the 'Credit Agreement') with the Lender over 180 months. The loan was repaid in full in September 2023.

On 28 February 2024, Mr and Mrs W – using a professional representative (the 'PR') – submitted a complaint to the Lender which highlighted various concerns about the Timeshare purchase and the associated Credit Agreement. In summary, the concerns and allegations included:

1. Misrepresentations by the Supplier at the Time of Sale giving them a claim against the Lender under Section 75 of the CCA ('S75'), which the Lender failed to accept and pay.
2. The Lender was party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA ('S140A').

The specific allegations can be summarised as follows:

(1) S75: the Supplier's misrepresentations at the Time of Sale

- "...purchasing further points would be extremely beneficial as they would be able to achieve the benefits they wanted with more points.";
- "...this purchase would allow them to have plenty of choice of resorts all over the world and offer them flexibility to go anytime and anywhere."

However, the PR alleges *"the representations proved to be false – [Mr and Mrs W] had no increased flexibility nor accessibility to the resorts anytime and anywhere, nor did they gain anything from their points"*.

(2) S140A: the Lender's participation in an unfair credit relationship

In addition to the alleged misrepresentations, the Letter of Complaint sets out other reasons why Mr and Mrs W say that the credit relationship between them and the Lender was unfair to them under S140A. In summary, they include the following:

- The Supplier may not have completed a compliant sales process under the Resort Development Code of Practice (the 'RDO').
- Evidence has not been provided that the Lender completed the necessary checks when agreeing to lend to Mr and Mrs W suggesting the decision to lend may well

have been irresponsible.

The Lender provided its written response on 22 April 2024 explaining why it didn't agree there was any evidence the loan had been provided to Mr and Mrs W irresponsibly, or there was any evidence the loan was unaffordable.

The PR didn't agree with the Lender's response responding in writing on 6 June 2024. The PR thought the Lender had "...*failed to consider material points...*". In summary, the PR argued:

- The Lender's failure to provide evidence that appropriate assessments to lend had been completed suggested it is more likely than not that they weren't.
- Repayments over 15 years caused detriment to Mr and Mrs W each month when they had to find the funds to cover those repayments.
- The Lender had made no effort to consider the misrepresentations and failed to address arguments in relation to the recent judgment in *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd* and *R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('*Shawbrook & BPF v FOS*').

The Lender provided its further written response on 1 July 2024. In summary, it said:

- Mr and Mrs W "*would have been provided with sufficient information at the point of sale to enable them to make a reasoned decision and given sufficient time in which to make it*".
- "*There is no evidence to suggest [Mr and Mrs W] were pressured into purchasing their membership*".
- The PR has "*not provided any evidence, or comments from [Mr and Mrs W] regarding what benefits they wanted and which they could not achieve...*".
- The PR has "*not provided any specific reasons for why [it] feels the affordability checks were not suitable [...] or why the loan was unaffordable*".

Mr and Mrs W (using the PR) referred their complaint to the Financial Ombudsman Service. In addition to the complaint points raised with the Lender, the PR added:

- The Supplier breached the requirements of Regulation 6(1) of the Consumer Protection from Unfair Trading Regulations 2008 ('CPUT') with reference to the findings in *Shawbrook & BPF v FOS*.
- There was a continuous lack of availability to book the holidays Mr and Mrs W wanted at the time they wanted.

Mr and Mrs W's complaint was assessed by an Investigator who, having considered the information on file, didn't think Mr and Mrs W's complaint should be upheld. In particular, the Investigator thought Mr and Mrs W's S75 claim for misrepresentation had been made too late under the provisions of the Limitation Act 1980 (the 'LA'). Further, that there was no evidence the loan was unaffordable or that the actions of the Supplier or the terms of the Purchase Agreement had operated in such a way as to cause unfairness under S140A.

The PR didn't agree with the Investigator's findings, and in response:

- Requested copies of sales materials seen by the Investigator;
- Argued the time limit for the S75 claim should be postponed pursuant to Section 32 of the LA ('S32') as facts relevant to Mr and Mrs W's cause of action were concealed and only revealed after they saw the judgment in *Shawbrook & BPF v FOS*.

Mr and Mrs W's complaint was passed to me to consider further.

Having considered the relevant information about this complaint, I reached the same conclusion as our investigator. However, in doing so, for greater clarity I wanted to put forward more detailed reasoning. So, I issued a provisional decision ('PD') on 12 May 2025 giving Mr and Mrs W and Shawbrook Bank Limited the opportunity to respond to my findings below, before I reach a final decision.

In my PD, I said:

Relevant considerations

When considering what's fair and reasonable, DISP 3.6.4R of the FCA Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

The CCA introduced certain protections that afforded consumers (like Mr and Mrs W) a right of recourse against lenders (like the one here) that provide the finance for the acquisition of goods or services (like the Timeshare purchased) from suppliers.

The concerns Mr and Mrs W have about the sale of the Timeshare they purchased only constitute a complaint that the Financial Ombudsman Service has the authority to consider if those concerns are considered with at least one of those provisions of the CCA in mind.

S75 provides protection for consumers for goods or services bought using credit. Mr and Mrs W paid for the Timeshare under a new Credit Agreement with the Lender specifically for that purpose. So, it isn't in dispute that S75 applies here – subject to any restrictions and limitations. So, where the requirements of the CCA are met, it means Mr and Mrs W are afforded the protection offered to borrowers like them under those provisions. As a result, I've taken this section into account - together with any related provisions within the CCA - when deciding what's fair in the circumstances of this case.

S140A looks at the fairness of the relationship between Mr and Mrs W and the Lender arising out of the credit agreement (taken together with any related agreement). As the Timeshare purchased was funded under the Credit Agreement, they're deemed to be related agreements. Only a court has the power to make a determination under S140A. But as it's relevant law, I've considered it when deciding what I believe is fair and reasonable.

Given the facts of Mr and Mrs W's complaint, relevant law also includes the LA. This is because the original transaction - the purchase funded by the Credit Agreement with the Lender - took place in September 2008. Only a court is able to make a ruling under the LA, but as it's relevant law, I've considered any effect this might also have.

I want to make it clear that I've based my decision on what I think is more likely than not to have happened given the evidence that's available from the time and the wider circumstances. When doing that, my role isn't to address every single point that's been made. So, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided by both sides.

Mr and Mrs W's complaint under S75 CCA

Having considered everything, I don't think it would be fair or reasonable to uphold Mr and Mrs W's complaint for reasons relating to the S75 claim. As a general rule, creditors can reasonably reject S75 claims that they are first informed about after the claim has been time-barred under the LA. It wouldn't be fair to expect creditors to look into such claims so long after the liability first arose and after a limitation defence would be available in court. So, it's relevant to consider whether Mr and Mrs W's S75 claim was likely to be time-barred under the LA before it was put to the Lender.

A claim under S75 is essentially a “like” claim against the creditor. It mirrors the claim Mr and Mrs W could make against the Supplier. A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued (see Section 2 of the LA).

But a claim under s.75, like this one, is also “*an action to recover any sum by virtue of any enactment*” under Section 9 of the LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued here was the Time of Sale. I say this because Mr and Mrs W entered into the Purchase Agreement at that time based upon the alleged misrepresentations of the Supplier – which Mr and Mrs W says they relied upon. And as the Credit Agreement with the Lender provided funding to help finance the purchase, it was when they entered into the Credit Agreement that they allegedly suffered the loss.

It seems Mr and Mrs W first notified the Lender of their S75 complaint in February 2024. And as considerably more than six years had passed between the Time of Sale and when they first put the complaint to BPF, I don’t think it was ultimately unfair or unreasonable of BPF to reject Mr and Mrs W’s concerns about the Supplier’s alleged misrepresentations.

Could the limitation period be postponed?

The PR argue that the limitation period should be postponed pursuant to S32 LA because facts relevant to Mr and Mrs W’s complaint were concealed at the Time of Sale and only revealed following the judgment in *Shawbrook & BPF v FOS*.

Section 32(1)(b) applies when “*any fact relevant to the plaintiff’s right of action has been deliberately concealed from him by the defendant*”. But the PR haven’t provided me with anything persuasive to suggest that the Supplier deliberately concealed anything about the Timeshare Mr and Mrs W purchased that they wouldn’t have realised far sooner.

I think it’s clear that the alleged misrepresentations Mr and Mrs W refer to in the Letter of Complaint are likely to have become apparent shortly after they completed the purchase. After all, if the Supplier didn’t provide what Mr and Mrs W believed they were entitled to receive, I think that would have been clear very early on. And as I still can’t see why, given the allegations fuelling their claim, this particular issue prevented Mr and Mrs W from making a claim or raising a complaint earlier, my view is that this particular argument by the PR doesn’t help their cause.

I also can’t see what relevance the judgment in *Shawbrook & BPF v FOS* has in relation to the alleged misrepresentations here. The Timeshare Mr and Mrs W purchased was a completely different product to the ones considered in that case. And the basis of their allegations differs from what was ultimately considered in that case.

Mr and Mrs W’s unfair relationship complaint under S140A CCA

The court may make an order under S140B CCA in connection with a credit agreement if it determines that the relationship between the creditor (the Lender) and the debtor (Mr and Mrs W) is unfair to the debtor because of one or more of the following (from S140A):

- a) any of the terms of the agreement or of any related agreement;
- b) the way in which the creditor has exercised or enforced any of the rights under the agreement or any related agreement;

- c) 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).

In deciding whether to make a determination under this section the court shall have regard to all matters it thinks are relevant (including matters relating to the creditor and matters relating to the debtor).

Only a court has the power to make a determination under S140A. But as it's relevant law, I've considered it when looking at the various allegations.

A claim under S140A isn't limited to what happened immediately before or at the time a credit agreement and any related agreement were entered into. The High Court held in *Patel v Patel* [2009] EWHC 3264 (QB) (which was more recently approved by the Supreme Court in the case of *Smith v Royal Bank of Scotland Plc* [2023] UKSC34), that determining whether or not the relationship complained of was unfair had to be made "*having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination*". In that case it was deemed either the date of the trial in the case of an existing credit relationship or otherwise the date the credit relationship ended. So, having considered this, I believe the trigger point here is slightly different. Any relationship between Mr and Mrs W and the Lender continues while the Credit Agreement remains live. So, that relationship only ends once the Credit Agreement ends and any borrowing under it has been repaid.

I understand that Mr and Mrs W's completed full repayment of their loan with the Lender in September 2023. As this is within six years of when Mr and Mrs W's complaint was submitted to the Lender, I think their complaint under S140A was made in time. So, it is those concerns that I will explore here.

- Misrepresentation

In determining if the relationship is unfair under S140A (under the points detailed above), I think the alleged misrepresentations are relevant here. Further, even though I think it likely they couldn't be considered under S75 due to the effects of the LA, I think they could still be considered under S140A¹. So, in trying to establish whether I think a court would likely find that an unfair relationship existed, I've considered the alleged misrepresentations further in addition to the various other points raised in this complaint.

For me to conclude there was misrepresentation by the Supplier in the way that has been alleged, generally speaking, I would need to be satisfied, based on the available evidence, that the Supplier made false statements of fact when selling the Timeshare to Mr and Mrs W. In other words, that the Supplier told Mr and Mrs W something that wasn't true in relation to the allegations raised. I would also need to be satisfied that any misrepresentation was material in inducing Mr and Mrs W to enter into the Purchase Agreement. This means I would need to be persuaded that they reasonably relied upon false statements when deciding to buy the Timeshare.

From the information available, I can't be certain about what Mr and Mrs W were specifically told (or not told) about the benefits of the Timeshare they purchased at the Time of Sale. While the PR has detailed what Mr and Mrs W suggest was represented to them by the Supplier, I can't see that there's any clear explanation to demonstrate how they constituted misrepresentations. Neither does their appear to be any evidence to substantiate those allegations. In particular, any evidence that Mr and Mrs were not able to successfully secure the holiday bookings they wanted. It was, however, indicated that they were told those things, So, I've thought about that alongside the evidence that is available from the Time of Sale.

¹ See *Scotland & Reast v. British Credit Trust Limited* [2014] EWCA Civ 790

Although not determinative of the matter, I haven't seen any documentation which supports the assertions in Mr and Mrs W's complaint. And I can't see that they have provided details of any of the marketing materials they saw or the wider purchase documentation from the Time of Sale that echoes what the PR says they were told.

The Letter of Complaint suggests Mr and Mrs W were told that *"this purchase would allow them to have plenty of choice of resorts all over the world and offer them flexibility to go anytime and anywhere"*. But I haven't seen any evidence to suggest that the Supplier gave any assurance or guarantee that they would be able to secure bookings at their preferred destination at any time of their choosing. The documentation provided makes no such reference and in reality, I understand that bookings made under these timeshare products operate on a first come first served basis being subject to availability.

Like any holiday accommodation, availability was unlikely to be unlimited – given the higher demand at peak times, like school holidays, for instance. Whilst I haven't seen any evidence showing the holidays Mr and Mrs W took using their Timeshare, I haven't seen anything to suggest they weren't able to make use of their allocated points to holiday. I accept that they may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier misrepresented holiday availability or even breached the terms of the Purchase Agreement.

Having considered everything available, I haven't seen anything to support the allegations here. And because of that, I can't reasonably say, with any certainty, that the Supplier did misrepresent the Timeshare Mr and Mrs W purchased in the ways alleged.

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

Mr and Mrs W's complaint about the Lender being party to an unfair credit relationship was also 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 W and carried on unfair commercial practices which were prohibited under the regulations and codes of practice that apply. Specifically, it is suggested that the Supplier's actions were in breach of the RDO and CPUT in so far as the Supplier:

- pressured Mr and Mrs W into entering into the Credit Agreement;
- did not give Mr and Mrs W time to read or consider any of the information provided to them; and
- did not undertake a proper affordability check, failing to ascertain whether they could afford the loan.

But given the limited evidence in this complaint, I am not persuaded that anything done or not done by the Supplier was prohibited under the regulations and codes specifically referred to for the following reasons.

- The Allegation of pressure

The claim suggests Mr and Mrs W purchased the Timeshare and entered into the Credit Agreement following a lengthy and pressurised sales presentation. I acknowledge what the PR has said about this. So, I can understand why it might be argued that the prolonged nature of the presentation might have felt like a pressured sale – especially if, as Mr and Mrs W approached the closing stages, they were going to have to make a decision on the day in order to avoid missing out on an offer that may not have been available at a later date.

Against the straightforward measure of pressure as it's commonly understood, I find it hard to argue that Mr and Mrs W agreed to the purchase in 2008 when they simply didn't want to. I haven't seen any evidence to demonstrate that they went on to say something to the Supplier, after the purchase, to suggest they'd agreed to it when they didn't want to. The Purchase Agreement provided clearly highlights that Mr and Mrs W had the right to cancel the agreement at any time up to 24 September 2008. But neither the PR nor Mr and Mrs W have provided a credible explanation for why they didn't subsequently seek to cancel the purchase within the cooling off period permitted here.

If they only agreed to the purchase because they felt they were pressured, I find this aspect difficult to reconcile with the allegation in question. I haven't seen anything substantive to suggest Mr and Mrs W were obviously harassed or coerced into the purchase. And because of that, I'm not persuaded there's sufficient evidence to demonstrate they made their decision to proceed because their ability to exercise choice was – or was likely to have been – significantly impaired.

- Time to consider the agreement

I've seen very limited documentation from the time of the sale. But as I've already mentioned, Mr and Mrs W's right to withdraw from the Purchase Agreement at any time up to 24 September 2008 was clearly highlighted in capitalised type immediately above their signatures – as required under the regulations that applied.

So, even if I were to find that Mr and Mrs W weren't given adequate opportunity to read, consider and understand the purchase documentation at the Time of Sale - and I make no such finding - I would expect them to have had sufficient time in which to consider their decision within the subsequent 14 days. And, where appropriate, raise any questions or concerns before the loan was drawn and the purchase completed. There's no suggestion or evidence that Mr and Mrs W did raise any questions or concerns prior to the sale being completed. Or that they had any intention of cancelling the agreement.

- Were the required lending checks undertaken?

The PR has suggested the loan may have been provided irresponsibly. In particular that there's no evidence that the Lender completed the necessary affordability checks.

The Lender hasn't provided specific details of the credit assessment that was completed. And given the passage of time, I wouldn't reasonably expect that information to still be available. However, in its response to the PR, the Lender has confirmed that Mr and Mrs W met all scheduled repayments as they fell due with no evidence of arrears. And importantly, that they have no record of Mr and Mrs W contacting them about any concerns they may have had about the continuing affordability of those repayments. Notably, it appears Mr and Mrs W haven't suggested at any point that they did contact the Lender with such concerns.

If I were to find that the Lender hadn't complete the necessary checks and tests in order to comply with the requisite regulatory requirements – and I make no such finding – I would need to be satisfied that had the checks completed, they would've revealed that the loan repayments weren't sustainably affordable for Mr and Mrs W in order to uphold their complaint here.

I haven't seen any information about Mr and Mrs W's actual financial situation at the time the Credit Agreement was entered into. And there's no clear evidence that they struggled to maintain repayments. In fact, the Credit Agreement appears to have now been fully repaid in line with the agreed terms. So, I can't reasonably conclude the

Credit Agreement was unaffordable for them. And because of that, there doesn't appear to be any evidence of loss here either.

Summary

Having carefully considered everything that's been said and provided, I can't reasonably conclude that the Lender's response to Mr and Mrs W's complaint was either unfair or unreasonable. And whilst I do understand Mr and Mrs W will be disappointed, I don't currently intend to ask the Lender to do anything more here.

With the time given for responses to my PD having expired, Mr and Mrs W's complaint was passed back to me.

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.

The Lender responded to acknowledge receipt of my PD and in doing so, confirmed it has nothing further to add.

The PR acknowledged receipt of my PD and asked for more time to seek instruction from Mr and Mrs W ahead of making further representations. I agreed to that request whereupon the PR subsequently confirmed that Mr and Mrs W do not accept my provisional findings. However, they provided no further comments or evidence for me to consider.

Whilst I acknowledge Mr and Mrs W's rejection of my provisional findings, in the absence of any new evidence or arguments, I've no reason to vary from those findings in reaching my final decision. For the reasons previously explained in my PD (detailed above) I will not be asking the Lender to do anything more.

My final decision

For the reasons set out above, I do not uphold Mr and Mrs W's complaint about Shawbrook Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 16 July 2025.

Dave Morgan
Ombudsman