

The complaint

Mr L and Ms S complain Shawbrook Bank Limited (“Shawbrook”) has failed to honour a claim brought under Section 75 of the Consumer Credit Act 1974 (“CCA”) and participated in an unfair credit relationship with them within the meaning of Section 140A of the CCA. Mr L and Ms S are represented in their complaint by a professional representative (“PR”).

What happened

Mr L and Ms S had become members of a timeshare scheme (the “European Collection”) offered by a specific timeshare provider (the “Supplier”), in 2012. They owned 22,000 “points” in the European Collection, which they could exchange annually for holiday accommodation in the Supplier’s portfolio.

While on holiday at one of the Supplier’s resorts in June 2014 (the “Time of Sale”), they made the purchase which is the subject of this complaint.

Mr L and Ms S entered an agreement with the Supplier (the “Purchase Agreement”) to trade in all of their 22,000 European Collection points against 30,000 points in the Supplier’s “Fractional Club”, which was a type of asset-backed timeshare scheme. The purchase was split over two sets of paperwork, with the total price being £52,800. A £22,000 allowance was given for the trade-in of the European Collection points, meaning the balance to pay was £30,800.

The Supplier arranged a loan with Shawbrook for the balance, repayable over 120 months at around £450 per month. Mr L and Ms S settled the loan early, in late September 2014. As well as giving Mr L and Ms S holiday rights, the Fractional Club membership entitled them to a share in the net sale proceeds of an apartment (or apartments) (the “Allocated Property”) named on their purchase paperwork, at the end of 15 years when the scheme was due to end.

Mr L and Ms S complained to Shawbrook, via PR, on 24 July 2019. PR didn’t explain on what legal grounds the complaint was being made, but it identified the following concerns:

- Mr L and Ms S had been concerned about the length of their European Collection membership and had approached the Supplier about this in Tenerife in June 2014. They had been told the way to get out was to buy into the Fractional Club membership.
- The Supplier had told them they would have an option to sell in 15 years and get a return on their money, and their children would also be entitled to this return if they died.
- They later discovered that it had been illegal for the Supplier to sell the product to them in this way – as an investment.
- They had experienced difficulties booking holidays in the Fractional Club because the Supplier had been advertising its resorts for rent on booking platforms available to the general public, and for less money.

Shawbrook rejected the complaint, and so PR referred it to the Financial Ombudsman Service for an independent assessment. The case was initially assessed by one of our Investigators in early 2024. She asked if PR had any direct testimony from Mr L and Ms S, such as a witness statement, for her to consider. PR replied that its letter of complaint to Shawbrook was reflective of conversations it had had with Mr L and Ms S, and should be taken as their testimony.

Our Investigator then issued an assessment. She didn't think the complaint should be upheld. PR appealed against that assessment, and provided a copy of a letter it had sent to Shawbrook, emphasising that the sale of the timeshare to Mr L and Ms S as an investment had been a breach of the regulations on selling timeshares (the "Timeshare Regulations"), and had led to an unfair credit relationship between them and Shawbrook. PR also argued that Mr L and Ms S had not been told that, if they defaulted on their loan, their timeshare would be confiscated.

The case was then considered by another Investigator. She also didn't think the complaint should be upheld. She said she couldn't find any terms in any of the relevant agreements that caused the timeshare to be confiscated if the loan was defaulted. The closest she could find was a term which meant the timeshare could be suspended if Mr L and Ms S didn't pay the annual maintenance fees. Our Investigator also didn't consider a breach of the Timeshare Regulations had been made out, nor that any such breach had caused the credit relationship to be unfair to Mr L and Ms S. She noted that because there was no direct testimony from Mr L and Ms S, it was difficult to tell what their recollections had been from the Time of Sale.

PR appealed again, reiterating that the content of its original letter of complaint was reflective of what Mr L and Ms S had told it in conversations, adding that it was consistent with widespread concerns about how timeshares were sold. PR added that while the terms our Investigator had identified did not refer to "confiscation" of the timeshare, Mr L and Ms S were not informed that their timeshare could be terminated if they failed to make periodic payments to the Supplier.

Further correspondence followed from PR, and in October 2025 it provided a direct statement from Mr L and Ms S. In this they said that they'd been in Lanzarote with the Supplier when they'd been approached by a representative who had promoted a new product – the Fractional Club – to them. They said they'd been told this would enable them to sell back their holdings with the Supplier at a profit and free their family from obligations after they died.

Because no agreement could be reached, the case has been passed to me to decide.

The legal and regulatory context

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

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here.

What I've decided – and why

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

Having done so, I have decided it shouldn't be upheld, for reasons that I'll go on to explain.

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 have not considered it.

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

Before going to analyse the specifics of the complaint in detail, I think it would be useful to set out how it is that Shawbrook could potentially be required to provide redress to Mr L and Ms S based on their complaint about what the Supplier did (or didn't do). The two main avenues via which they could seek redress are through a claim under Section 75 of the CCA, or through a complaint that Shawbrook participated in an unfair credit relationship with them under Section 140A of the CCA.

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

In short, a claim against Shawbrook under Section 75 essentially mirrors the claim Mr L and Ms S 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. Unfortunately, I think the cash price of the purchase in question in this case falls outside the limits allowed under Section 75, which only applies to purchases of up to £30,000. While I'm mindful of the fact that the purchase in this case was set out across two sets of paperwork, these were completed at the same time and I think they all essentially constituted a single contract – with a price of £52,800. So I don't think Section 75 applies to the purchase.

There is another part of the CCA that does still apply to the purchase – Section 75A – which is not limited to purchases of £30,000, but covers breaches of contract only. I'll go on to consider any allegations that appear to be allegations of a breach of contract later in this decision.

The application of Section 140A is more complicated. Insofar as is relevant to this case, it means that the debtor-creditor relationship between Mr L and Ms S and Shawbrook can be found to have been unfair because of anything done (or not done) by, or on behalf, of Shawbrook, before the making of the credit agreement. An unfair debtor-creditor relationship can also be based on the terms of a related agreement (such as the purchase agreement for the timeshare) and, when combined with section 56 of the CCA, on anything done or not done by the Supplier on Shawbrook's behalf before the making of the credit agreement or any related agreement. Section 56 has the effect of making the Supplier Shawbrook's agent for the purposes of the negotiations leading up to the purchase.

However, just because the Supplier may have done something wrong and breached a legal or equitable duty, doesn't necessarily mean that the relationship between Mr L and Ms S, and Shawbrook, will have been rendered unfair. It's important to consider all of the relevant facts before concluding that this is, or was, the case. I will cover this in more detail later, but first I've considered whether or not Mr L and Ms S had a valid claim against Shawbrook under Section 75 of the CCA.

But before, even, I do that, I think it's important to tackle a very important issue which our second Investigator focused on in her assessment – that of Mr L and Ms S's testimony, and the matter of its timing.

The difficulties with Mr L and Ms S's testimony

This is, for the most part, a complaint about things that happened a long time ago. In particular, it is about things that were alleged to have been said, rather than written down. When our Investigators made their assessments of the complaint, the events in question had taken place around ten years ago. And at the time PR first wrote to Shawbrook about the complaint, around five years had passed since those events.

It appears that no direct testimony (for example, a witness statement) was supplied to Shawbrook. Nor was any direct testimony supplied to the Financial Ombudsman Service, from January 2020 when PR first wrote to us about the case, to October 2025 when we received a brief statement. PR has suggested that its original letter of complaint was based on conversations with Mr L and Ms S and should be treated as first-hand testimony, but I don't think the letter of complaint was a proper substitute for hearing from Mr L and Ms S in their own words. The letter is essentially a series of assertions not supported by evidence from Mr L, Ms S, or other contemporaneous sources. And I note there is at least one difference between the letter of complaint and the later statement from Mr L and Ms S.¹

As far as I can see, PR first offered to provide direct testimony from Mr L and Ms S in July 2025. This was after two Investigators had issued unfavourable assessments, and after the judgment in *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ("Shawbrook & BPF v FOS") was handed down. This judgment emphasised that the potential mis-selling of timeshares as investments could give rise to an unfair credit relationship between a borrower and any linked lender which had financed the purchase.

Part of my assessment of Mr L and Ms S's direct testimony must be to consider when it was written, and whether it may have been affected by external factors such as the widespread publication of the outcome of *Shawbrook and BPF v FOS*.

Experience tells me that, the more time that passes between a complaint and the events complained about, the more risk there is of recollections being vague, inaccurate and/or influenced by discussion with others. In light of this, I think there is a very real risk that the direct testimony produced by PR in October 2025 would have been coloured by the judgment in *Shawbrook & BPF v FOS*.

And, on balance, the way in which the evidence has been provided makes me conclude that I have to treat it with considerable caution and can place little weight on it.

¹ In the letter of complaint PR says the purchase took place in Tenerife, while the later statement says it took place in Lanzarote.

My concerns with Mr L and Ms S's evidence thus set out, I'll go on to consider the substance of their complaint. While PR did not set out the precise legal basis for their original claims, I think it was articulating a claim under Section 75 of the CCA for breach of contract, and a claim that the credit relationship between Mr L and Ms S had been rendered unfair to them due to acts or omissions by the Supplier. I'll go on to consider both areas of complaint in turn.

Mr L and Ms S's Section 75 claim for breach of contract

For the purposes of this case, a breach of contract would be a failure by the Supplier to honour the terms of the contract it signed with Mr L and Ms S. One of the allegations made in the original letter of complaint was that Mr L and Ms S had been struggling to book the holidays they wanted with their points, because the Supplier was renting out accommodation to members of the general public. On my reading of the complaint, this suggests that the Mr L and Ms S consider that the Supplier was not living up to its end of the bargain, and was in breach of contract. Like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. It also looks like Mr L and Ms S made use of their membership in 2014, 2015 and 2017, to take holidays. 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 had breached the terms of the agreement they'd signed up to. And while it does seem that the Supplier advertised some of its accommodation to the general public, I've not seen anything in the paperwork which suggests it had agreed not to do this.

So, I don't think Shawbrook was wrong to decline Mr L and Ms S's Section 75 claim for breach of contract.

Section 140A – allegations of an unfair credit relationship

Mr L and Ms S's complaint about an unfair credit relationship was brought for two reasons which I've outlined above. One of them was an allegation that they were not told that, if they defaulted on their loan repayments, their timeshare would be confiscated. This later changed to an allegation that they were not told their timeshare would be confiscated or suspended if they failed to pay the annual management fees. I believe PR is arguing here that the terms in question are unfair and were prejudicial to Mr L and Ms S.

It does appear that the Supplier is able to suspend and even bring to an end Mr L and Ms S's membership if they fail to make their annual management fee payments. I can see an argument that such a term has the potential to be exercised in an unfair way. However, no evidence has been offered in this case of the terms actually being exercised in an unfair way against Mr L and Ms S, or that they will be in the future. In light of this, I don't think the terms complained of have rendered Mr L and Ms S's credit relationship with Shawbrook unfair to them.

The final reason given by PR is that the Supplier marketed or sold the Fractional Club membership to Mr L and Ms S as an investment, in breach of Regulation 14(3) of the Timeshare Regulations, and that this was the reason they went ahead with their purchase. This, PR says, rendered Mr L and Ms S's credit relationship with Shawbrook unfair to them.

As I've discussed above, there was no first-hand evidence from Mr L or Ms S in this case, of what the Supplier said prior to them purchasing their membership, until October 2025, and I'm unable to place weight on their recent testimony for the reasons I've already explained.

In light of this, it's very difficult for me to conclude that (in the absence of documentary evidence to support it) the Supplier sold or marketed the membership to them as an

investment at the Time of Sale. Indeed, some of the documentary evidence dating to the Time of Sale, and signed by Mr L and Ms S, expressly says the product is *not* an investment.

And with all that being the case, I think there's insufficient evidence the Supplier marketed or sold the membership to Mr L and Ms S as an investment at the point of purchase, or that they made their purchase because they thought the product was an investment. I've thought about PR's other points, but my overall conclusion is that I've not seen evidence to show that Shawbrook participated in a credit relationship with Mr L and Ms S that was unfair to them within the meaning of Section 140A of the CCA.

My final decision

For the reasons explained above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Ms S to accept or reject my decision before 20 March 2026.

Will Culley
Ombudsman