DRN-5999330

The complaint

Mr A's complaint is, in essence, that Shawbrook Bank Limited acted unfairly and unreasonably by (1) being party to an unfair credit relationship with him 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.

Background to the complaint

Mr A purchased a Signature Collection timeshare membership (the 'Membership') from a timeshare provider (the 'Supplier') in November 2015. Along with holiday rights, the Membership also provided Mr A with a share in the net sale proceeds of a designated property at the end of the Membership term.

Mr A took out a loan from Shawbrook to help pay for the Membership.

In December 2023, Mr A – using a professional representative (the 'PR') – wrote to Shawbrook to raise a number of different concerns that, in summary, comprised a claim under Section 140A and Section 75 of the CCA as summarised above.

Shawbrook dealt with Mr A's concerns as a complaint, rejecting it on every ground. So the PR, on Mr A's behalf, referred the complaint to us. It was assessed by an Investigator who did not recommend that it be upheld, saying – in summary, that:

- Mr A had raised his claim under Section 75 after more than six years, giving Shawbrook a complete defence to it under the Limitation Act 1980. So while Shawbrook had declined the claim on its merits, either way it had been reasonable for it to do so.

- No unfairness had arisen within Mr A's credit relationship with Shawbrook such that any compensation was warranted. While accepting that there may have been some shortcomings in how the Supplier sold the Membership to Mr A, these hadn't prejudiced his position or led him to act any differently than he otherwise would have done.

The PR disagreed with the Investigator's assessment and asked that an Ombudsman review the complaint, so it was 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.

Mr A's Section 75 claim

A claim against Shawbrook under Section 75 essentially mirrors the claim Mr A could make against the Supplier.

There are, though, certain time limits that apply – and I think these mean Mr A's claim would've been time-barred. The Limitation Act 1980 sets out limitation periods, or time limits, for bringing various types of legal claim. For a claim based on contract, it's not generally possible to start court action more than six years after the cause of action arose. If a claim is brought too late, the respondent is likely to have a complete defence to the claim on that basis.

For claims relating to misrepresentation, the time limit would typically be six years from the date the claimant suffers damage as a result of the misrepresentation. For example, entering into a contract – and incurring liabilities – when they would otherwise not have done.

Mr A's claim under Section 75 is that but for the Supplier's various alleged misrepresentations, he wouldn't have purchased the Signature Collection membership (and, therefore, entered into the related loan with Shawbrook). So it is the date on which he entered into those agreements that his cause of action arose, meaning he had six years from that date within which to bring this claim.

Mr A purchased the membership on 3 November 2015. He raised his Section 75 claim on 20 December 2023 – more than six years later. So I think Shawbrook had a complete defence to the claim about misrepresentation, having been raised outside of the six-year statutory limit.

So I don't think Shawbrook acted unreasonably or unfairly when declining Mr A's Section 75 claim.

The fairness of Mr A's credit relationship with Shawbrook

I should start by saying that I have noted the PR's point in response to our Investigator's view that under Section 140B(9) of the CCA, the burden of proof falls on Shawbrook to disprove the allegation that its relationship with Mr A was unfair. I agree that this is correct, placing a burden on lenders during the process of litigation. That does not mean, though, that Shawbrook – or I – should take a claim at face value. There remains an onus on Mr A to provide some evidence for the claim he's making, despite the overall burden of proof resting with Shawbrook[1]. Also, my role is to make findings on what I consider to be fair and reasonable in all the circumstances of any given complaint.

When initially raising the complaint, the PR raised a number of issues that it considered to have given rise to unfairness within Mr A's credit relationship with Shawbrook. All of these were considered and addressed by our Investigator, with the PR's rejection of his assessment based only on the question of whether the Supplier sold the Membership to

[1] As was set out in the judgment in *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34 at paragraph 40.

Mr A as an investment and the impact this had on his decision to purchase it.

Given that I have reached the same conclusion as our Investigator for much the same reasons, and in keeping with our remit as a quick and informal dispute resolution service, I've focused this written summary of my findings on the points that the PR has raised in its appeal. But I should reassure the parties that I have reviewed the whole complaint afresh in finding, like our Investigator, that:

- Even if Shawbrook failed to do everything it should have when it agreed to lend to Mr A as alleged by the PR, I can't see that the loan was actually unaffordable for him.

- Even if the loan was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see that caused Mr A any harm. He knew, amongst other things, how much he was borrowing and repaying each month, and that he was borrowing from Shawbrook to pay for the Membership. And, as above, it doesn't look like the loan was unaffordable for him.

- It's possible that the Supplier didn't give Mr A sufficient information about the various charges he could have been subject to under the terms of the Membership. But I don't think this prejudiced Mr A's position, as I think he would still have chosen to purchase the Membership even if it had. I've also not seen that the ongoing costs of the Membership have been applied unfairly in practice.

- Accepting the possibility that one or more of the contract terms in Mr A's agreement with the Supplier could be classed as unfair under the relevant legislation, I've not seen that any such terms have been operated unfairly against him in practice, nor that any such terms led him to behave in a certain way to his detriment.

- Shawbrook says that no money passed between it and the Supplier when the loan was arranged, including by way of commission, and there is no evidence to indicate otherwise. So I do not think there is anything within Shawbrook's commission arrangements with the Supplier that gave rise to any unfairness in Mr A's credit relationship with it.

So I don't think that Mr A's credit relationship with Shawbrook was rendered unfair to him under Section 140A for any of the reasons above.

Turning to the matters raised in the PR's response to our Investigator's view, it maintains that the Supplier sold the Membership to Mr A as an investment in breach of the prohibition against selling timeshares in that way[2] – indeed much of its response is devoted to this allegation. I accept, as our Investigator did, that the Membership might have been marketed as an investment to Mr A. But regulatory breaches do not automatically create unfairness and such breaches and their consequences – if there are any – must be considered in the round, rather than in a narrow or technical way. So it isn't necessary for me to make a finding on this as it isn't determinative of the outcome of the complaint.

Rather I have to consider whether any such breach had a material impact on Mr A's decision to purchase the Membership. In other words, whether it led him to do so – and take out the loan with Shawbrook – when he would otherwise not have done. And having considered all the available evidence, I'm not persuaded that it did.

The PR primarily bases its claim in this respect upon the statement Mr A provided in his own

[2] Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010

words. And I've carefully considered what he said. But this doesn't persuade me that he was motivated to purchase the Membership by the prospect of a profit[3].

The statement as a whole is brief, comprising just two sentences, and does not, in my view, set out in sufficient detail any meaningful recollections about either what Mr A was told by the Supplier or what motivated him and his wife to purchase the Membership.

Of relevance to the point at issue, Mr A says:

> "*We were basically promised fantastic holidays, with the end result being that we would be able to sell our fractional share for a strong profit – this was the main factor when committing to this option (as this would give us enjoyable holidays over the years, but also a great investment) – similar to any other property investment with equity building up in the background and profit at the end* …"

While Mr A does mention that he held an expectation of a profit – and indeed that it was "the main factor" in his decision – it is framed in such vague and general terms that I find it hard to place any weight upon it. Moreso given that Mr A does not refer to the relevant context of his purchase – being that he upgraded from an existing membership with the Supplier through which he already held a share in the net sale proceeds of a property. This is relevant in two ways.

Firstly, it is unclear to me if Mr A's recollections actually relate to the sale at issue or a previous sale. He does not refer to any dates or other identifying information to confirm which sale he is describing. Our Investigator highlighted this risk in their assessment but I note the PR declined to comment on it either way. Even accepting that Mr A's intention was to recall the sale of the Membership at the centre of this complaint, I am also mindful of the possibility that he could quite understandably have conflated what he was told in different sales in light of the time that has passed.

Secondly, accepting again that Mr A's comments relate to the sale at issue, the fact that Mr A does not mention a desire to *increase* the size of his investment in proceeding to purchase the Membership is noteworthy. If the hope or expectation of a profit was a material factor in his decision to upgrade from the "Fractional Club" to the "Signature Collection", I would expect him to have mentioned this.

On a related note, the Signature Collection offered numerous other benefits to Mr A's existing membership, most notably superior accommodation including the right to stay at the property in which Mr A held a share of the net sale proceeds. It seems to me at least equally as likely that Mr A was motivated to upgrade in order to gain access to the additional benefits that Signature Collection membership offered.

As Mr A doesn't persuade me that his purchase was motivated by the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier is likely to have been material to his decision. On balance, I think it more likely than not that Mr A would always have pressed ahead with his purchase even if the Supplier marketed the Membership to him as an investment.

Taking all of this into account, I don't think Shawbrook was party to a credit relationship with Mr A that was unfair to him for the purposes of Section 140A of the CCA.

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[3] 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.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 24 March 2026.

Ben Jennings
Ombudsman