

The complaint

Mr and Mrs G complain Shawbrook Bank Limited (the “Lender”) has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the “CCA”).

Mr and Mrs G are represented in their complaint by a professional representative (“PR”).

What happened

This complaint relates to a timeshare purchase made by Mr and Mrs G from a timeshare provider (the “Supplier”) on 12 October 2014. Up to that point, they’d had a “Vacation Club” membership with the Supplier, which was also a type of timeshare. I’ve outlined the basic details below:

- The purchase made on 12 October 2014 was of a membership in the Supplier’s “Fractional Club”. Mr and Mrs G bought 2,430 points in the Fractional Club, which could be used to book holiday accommodation annually (the “Purchase Agreement”). This type of timeshare was also asset-backed, meaning it included a share in the future sale proceeds of a specific timeshare apartment named on Mr and Mrs G’s purchase paperwork (the “Allocated Property”). According to the Purchase Agreement, the price was £5,885. However, it appears this was the price after Mr and Mrs G’s Vacation Club membership was traded-in against the full price. The full price is likely to have been considerably greater.
- The Supplier arranged a loan (the “Credit Agreement”) with the Lender for £15,678, which was made up of the balance of the purchase price and the consolidation of debt with another lender from a previous purchase. This was repayable over 180 months at £246.92 per month.
- In September 2018, through PR, Mr and Mrs G complained to the Lender, seeking to find it responsible under Section 75 of the CCA for the Supplier having mis-sold the timeshare. PR said the Supplier had falsely told Mr and Mrs G that the only way to get out of their Vacation Club membership was to trade it in for the Fractional Club membership. Furthermore, Mr and Mrs G now struggled to book the accommodation they wanted, when they wanted, because the Supplier was advertising accommodation cheaply to non-members on third party booking websites.

The Lender rejected the complaint, which was then referred to the Financial Ombudsman Service. There was a long delay in us being able to assess the complaint. In December 2023, PR essentially asked us to consider, in light of a recent High Court judgment involving the Financial Ombudsman Service and certain lenders, whether or not the credit relationship between Mr and Mrs G, and the Lender, had been rendered unfair to them within the meaning of Section 140A of the CCA.

One of our Investigators was then assigned the complaint. He didn’t think the complaint should be upheld, issuing an assessment in which he said there was insufficient evidence to show the Supplier had misrepresented the product to Mr and Mrs G. He noted that a complaint about an alleged unfair credit relationship under Section 140A had never been

made to the Lender, and it wouldn't be appropriate for him to make findings on a complaint or claim that had never been made to the Lender.

Mr and Mrs G disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

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 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 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.

I think it's important firstly to address the scope of the complaint I am deciding.

Our Investigator decided not to deal with Mr and Mrs G's complaint about there having been an unfair credit relationship between them and the Lender, because such a complaint had never been made to the Lender. PR disagrees with this, but in my view it was the correct decision.

The Financial Ombudsman Service is unable to consider complaints which have never been put to the respondent firm (i.e. the Lender) for it to look into. I've read PR's 2018 letter of complaint to the Lender. It is very short, consisting of about half a page. It refers only to Mr and Mrs G making a claim under Section 75 of the CCA, and briefly outlines their concerns (as described earlier in this decision). I'm unable to construe any of the points made within that letter, as making a case that the Lender had participated in a credit relationship with Mr and Mrs G that had been unfair to them, within the meaning of Section 140A of the CCA.

It is only in PR's later correspondence with this service, from December 2023 onwards, that these allegations appear, focused primarily on the Supplier having either run an illegal unregulated collective investment scheme, or having improperly sold and/or marketed the Fractional Club membership to Mr and Mrs G as an investment, in breach of the regulations on selling timeshares.

As far as I can see, these allegations have never been put by PR or Mr and Mrs G to the Lender. It follows that I'm unable to consider them further.

Turning to the matters I can consider, Section 75 of the CCA allows consumers who have purchased goods or services using certain kinds of credit, to claim against the credit provider in respect of any breach of contract or misrepresentation by the supplier of those goods or services, subject to certain conditions being met.

For the purposes of this case, a misrepresentation can be described simply as a false statement of fact that causes a person to enter a contract when they otherwise wouldn't have done.

PR, on Mr and Mrs G's behalf, says that their existing contract with the Supplier was in perpetuity, and "...they were told [by the Supplier] the only way to get out of [the contract] was to buy into [Supplier's] Fractional Timeshare". PR then goes on to say they discovered after making their purchase that they could simply have exited their old contract.

There's insufficient persuasive evidence to support this allegation. There's very little colour or context to it, or any recollections from Mr and Mrs G of what happened in their own words. It is simply not enough to arrive at a conclusion that the Supplier made an actionable misrepresentation to Mr and Mrs G for which the Lender is liable to them under Section 75.

A breach of contract occurs when one party to a contract fails to hold up its side of the bargain. Breaches can be of express terms written into the contract, or terms which are implied by law.

I've interpreted PR's comment that Mr and Mrs G had struggled to book the accommodation using their membership where they wanted, when they wanted, to be an allegation that the Supplier was in breach of contract. However, as with the allegation of misrepresentation, there is a real lack of detail in PR's submissions. There are no specific examples given of bookings which Mr and Mrs G were unable to make. And while I think it's plausible there might have been occasions during their membership when they couldn't get the exact accommodation or dates they wanted, it doesn't necessarily follow that this represented a breach of contract by the Supplier.

I note the documents which made up Mr and Mrs G's Purchase Agreement said that holidays would be subject to availability and "first-come, first-served". There doesn't appear to have been any contractual guarantee that Mr and Mrs G would get their first choice of dates or location. And with that being the case, I'm unable to conclude the Supplier breached its contract with Mr and Mrs G for reasons relating to availability of holidays.

In light of the above, I don't think the Lender acted unfairly or unreasonably when it declined Mr and Mrs G's Section 75 claim.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 6 January 2026.

Will Culley
Ombudsman