

The complaint

Mr and Mrs W's complaint is, in essence, that Shawbrook Bank Limited 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.

Background to the complaint

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

Mr and Mrs W paid for the Membership with a loan from Shawbrook.

In February 2024, Mr and Mrs W – using a professional representative (the 'PR') – wrote to Shawbrook to raise a number of different concerns that, in short, comprised a claim under Section 140A and Section 75 of the CCA as summarised above.

Shawbrook dealt with Mr and Mrs W's concerns as a complaint, rejecting it on every ground. So the PR, on Mr and Mrs W'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 and Mrs W had raised their claim under Section 75 after more than six years, giving Shawbrook a complete defence to it under the Limitation Act 1980.
- No unfairness had arisen within Mr and Mrs W'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 and Mrs W, these hadn't prejudiced their position or led them to act any differently than they 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 and Mrs W's Section 75 claim

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

There are, though, certain time limits that apply – and I think these mean Mr and Mrs W'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 and Mrs W's claim under Section 75 is that but for the Supplier's various alleged misrepresentations, they wouldn't have purchased the Fractional Club membership (and, therefore, entered into the related loan with Shawbrook). So it is the date on which they entered into those agreements that their cause of action arose, meaning they had six years from that date within which to bring this claim.

Mr and Mrs W purchased the membership on 3 November 2015. They raised their Section 75 claim on 16 February 2024 – 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 and Mrs W's Section 75 claim.

The fairness of Mr and Mrs W'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 and Mrs W 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 and Mrs W to provide some evidence for the claim they're making, despite the overall burden of proof resting with Shawbrook¹. 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 and Mrs W'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 Mr

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

and Mrs W as an investment and the impact this had on their 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 and Mrs W as alleged by the PR, I can't see that the loan was actually unaffordable for them.
- 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 and Mrs W any harm. They knew, amongst other things, how much they were borrowing and repaying each month, and that they were borrowing from Shawbrook to pay for the Membership. And, as above, it doesn't look like the loan was unaffordable for them.
- It's possible that the Supplier didn't give Mr and Mrs W sufficient information about the various charges they could have been subject to under the terms of the Membership. But I don't think this prejudiced Mr and Mrs W's position, as I think they 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 and Mrs W'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 them in practice, nor that any such terms led them to behave in a certain way to their 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, or how these were disclosed, that gave rise to any unfairness in its credit relationship with Mr and Mrs W.

So I don't think that Mr and Mrs W's credit relationship with Shawbrook was rendered unfair to them 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 and Mrs W as an investment in breach of the prohibition against selling timeshares in that way² – 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 and Mrs W. 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 and Mrs W's decision to purchase the Membership. In other words, whether it led them to do so – and take out the loan with Shawbrook – when they would otherwise not have done. And having considered all the available evidence, I'm not persuaded that it did.

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

The PR primarily bases its claim in this respect upon the statement Mr and Mrs W provided in their own words. And I've carefully considered what they said. But this doesn't persuade me that they were motivated to purchase the Membership by the prospect of a profit³.

The statement as a whole is brief and does not, in my view, set out in sufficient detail any meaningful recollections about either what Mr and Mrs W were told by the Supplier or what motivated them to purchase the Membership at issue.

Such mentions as there are of the investment element speak in factual terms about the way this aspect worked:

"[The Membership] was bought upon the understanding that we would be able to use the points purchased for luxury holidays for 19 years ... after which the apartment would be sold and we would receive a financial return."

Similar points are made elsewhere in the statement that refer to the receipt of a proportion of the designated property's selling price in accordance with the size of their share at the end of the Membership term.

Mr and Mrs W do not, to my mind, suggest they expected to make a profit. They recall – correctly – that they would receive an amount of money upon the sale of the property at the end of the term, but not that they stood to *make* money as a result of this.

As Mr and Mrs W don't persuade me that their 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 their decision. On balance, I think it more likely than not that Mr and Mrs W would always have pressed ahead with their purchase even if the Supplier marketed the Membership to them as an investment.

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

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 19 March 2026.

Ben Jennings
Ombudsman

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.