DRN-6026915

The complaint

Mr and Mrs F say Shawbrook Bank Limited ('Shawbrook') has unfairly declined their claim under sections 75 and 75A of the Consumer Credit Act 1974 ('CCA'). And they say their creditor-debtor relationship with Shawbrook was unfair to them under section 140A of the CCA.

What happened

Mr and Mrs F have, together and separately, made several purchases from a timeshare provider (the 'Supplier').

Using a professional representative ('PR') they've referred three separate complaints to our service. I will issue a separate decision for each complaint.

However, I've included some basic information below about every purchase I'm aware of, as I think it's important to put the sales complained about in context.

This complaint is about Sale 5 and Sale 7.

Sale 1: In 2009, Mr and Mrs F purchased a 'trial membership' from the Supplier.

Sale 2: Shortly afterwards, they purchased a 'full' membership from the Supplier, which included 1,501 points. I've seen a purchase agreement dated 8 April 2009, which says the membership cost £21,414. However, Mr and Mrs F received a 'trade-in' value of £5,995 for their trial membership, which left £15,419 to pay. I've also seen a one-page, handwritten loan agreement in Mr F's name only. This says the cash price of the 'Holiday Ownership Product' was £20,214. Again, there's a £5,995 deduction, which means Mr F borrowed £14,214 from a firm I'll call 'Lender 2' to pay the balance. Mr F signed the loan agreement on 5 May 2009. I can't explain the discrepancies, but I've assumed the May 2009 loan financed the April 2009 purchase.

Sales 3 and 4: In its final response letter, Shawbrook says Mr and Mrs F made two further purchases from the Supplier – one in October 2009 and another in November 2010 – to increase the number of points they owned. I don't know who financed these purchases, but Shawbrook says it didn't.

Sale 5: In April 2013, Mr and Mrs F purchased membership of a different type of timeshare ('Fractional Club') from the Supplier, which included 2,724 fractional points. Fractional Club membership was asset backed – which meant Mr and Mrs F acquired more than just holiday rights. It also included a proportionate share of the net sale proceeds of a property named on their purchase agreement at the end of their term. The membership cost £34,005. However, they received a 'trade-in' value of £27,511 for their existing membership, which left £6,494 to pay. Mr and Mrs F borrowed the full amount from Shawbrook to pay it.

Sale 6: In January 2014, Mr and Mrs F essentially varied their Fractional Club membership. They received a 'trade in' value of £34,005 for their existing membership, and Mrs F only – I don't know why Mr F wasn't included on the purchase agreement – purchased 2,830 fractional points at a cost of £39,013. Mrs F borrowed £5,008 from Shawbrook to pay the balance.

Sale 7: In July 2014, Mr and Mrs F again varied their Fractional Club membership. Mr and Mrs F purchased 2,910 fractional points at a cost of £42,618. Mrs F received a 'trade-in' value of £39,013 for her existing membership, which left £3,605 to pay. Mr and Mrs F borrowed £3,605 from Shawbrook to pay the balance, and an additional £11,867 to repay the earlier loans with Shawbrook. In total, they borrowed £15,472 from Shawbrook.

Sale 8: In May 2015, Mr and Mrs F purchased membership of a different type of timeshare ('Signature Collection'). Like Fractional Club, Signature Collection was asset backed.

The paperwork I've seen is confusing.

There's a 'Pricing Summary' sheet, dated 4 May 2015, that says Mr and Mrs F are purchasing '2 weeks' and '3,080 points' and that the allocated property is 03A at Sunningdale Village; the purchase price is £54,028, the trade-in value is £37,830 and the amount due is £16,198. There's also an undated 'Pricing Sheet', which includes the same figures, but stipulates that the '2 weeks' are Weeks 26 and 42 at 03A. I've seen a 'Member Loan Consolidation Instruction' dated 4 May 2015, which explains that a third lender ('Lender 3') will remit £50,000 to the Supplier, and that £15,935 will be used to repay a loan with Shawbrook, and £19,456 will be used to repay a loan with Lender 2. A statement of account shows that Mr F borrowed £50,000 from Lender 3 and that the money was released on 5 May 2015.

Then there are two 'Application and Purchase Agreements', both dated 11 May 2015. One says Mr and Mrs F are purchasing '1 week' and '1,500 points' and that the allocated property is 'Suite 620 Week 29' at Castillo del Ray; the purchase price is £11,638. The other says Mr and Mrs F are purchasing '1 week' and '1,540 points' and that the allocated property is '03A Week 41' at Sunningdale Village; the purchase price is £4,560. I've seen corresponding 'Member's Declarations', both dated 11 May 2015 – and the copy I've seen for Suite 620 Week 29 has been signed by Mr and Mrs F.

For this decision, I don't think need to clarify what's what. It's clear to me that Mr F borrowed £50,000 from Lender 3 to buy membership of the Supplier's Signature Collection and consolidate two earlier loans. And it looks like Mr and Mrs F traded in their existing Fractional Club membership at this time.

Sale 9: In October 2016, Mr and Mrs F appear to have varied their Signature Collection membership. They purchased '1 week' and '1,820 points'; the allocated property was '03A Week 35' at Sunningdale Village. The purchase price was £33,777 and they received a 'trade in' value of £19,500 – although what they surrendered isn't clear – which left £14,277 left to pay. Mrs F borrowed the full amount from Lender 3.

Mr and Mrs F's PR wrote to Shawbrook on 25 June 2019 (the 'Letter of Claim') to make a claim under sections 75 and 75A of the CCA.

Shawbrook dealt with Mr and Mrs F's claim as a complaint and issued its final response letter on 8 August 2019. It rejected the complaint.

The complaint was then referred to our service. Before it was assessed by an investigator, the PR wrote to Shawbrook – and sent us a copy of the letter – to also complain that Mr and Mrs F's creditor-debtor relationship with Shawbrook was unfair to them under section 140A of the CCA.

One of our investigators assessed Mr and Mrs F's claim under section 75 and rejected the complaint on its merits. Another investigator subsequently assessed the complaint about the fairness of the credit relationship under section 140A and also rejected the complaint on its merits.

Mr and Mrs F's PR asked for a final decision from an ombudsman.

I issued a provisional decision on 13 November 2025, which explained why I didn't intend to uphold this complaint. It included the following provisional findings:

Sections 75 and 75A of the CCA

Section 75(1) of the CCA protects consumers who buy goods and services on credit. It says, in certain circumstances, that the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier. However, Mr and Mrs F's purchases don't meet the relevant criteria. Section 75(3) of the CCA says section 75(1) doesn't apply to a claim:

> *'(b) so far as the claim relates to any single item to which the supplier has attached a case price…[of] more than £30,000…'.*

The cash price of the membership Mr and Mrs F purchased in April 2013 was £34,005. The cash price of the membership they purchased in July 2014 was £42,618. This means that section 75(1) doesn't apply to either purchase.

Section 75A of the CCA is similar to section 75, except it only applies to breach of contract claims and when the cash value of the goods or services is more than £30,000 and less than £60,260. Mr and Mrs F's purchases clearly meet the 'cash value' condition. However, the Letter of Claim doesn't say there's been a breach of contract by the Supplier in relation to the memberships they purchased in April 2013 and/or July 2014.

It follows that I don't think it was unfair for Shawbrook to decline Mr and Mrs F's claim under sections 75 and 75A.

Section 140A of the CCA

While I appreciate that Mr and Mrs F's PR specifically referred to sections 75 and 75A in the Letter of Claim, the Letter of Claim included complaint points that aren't allegations of misrepresentation or breach of contract. To fully consider this complaint, I must therefore turn to a different section of the CCA and consider these points with section 140A in mind.

Section 140A says a court may make an order if it thinks the relationship between a creditor and a debtor is unfair to a debtor. It's deliberately framed in wide terms, and a finding of unfairness can flow from something done on the creditor's behalf in connection with a 'related agreement'. Here, the purchase agreements are 'related agreements'. And, by virtue of section 56 of the CCA, Shawbrook is legally answerable for the Supplier's actions.

Having considered the entirety of both relationships, I don't think either was unfair for the purposes of section 140A. In reaching this conclusion, I've considered:

(1) The standard of the Supplier's commercial conduct, which includes its sales and marketing practices at the time of each sale, and any relevant training material.
(2) The information provided by the Supplier at the time of each sale, including the contracts and any disclaimers made by the Supplier.
(3) All the evidence provided by both parties on what was supposedly said and/or done at the time of each sale.
(4) The inherent probabilities of what's likely to have happened given the circumstances of each sale.

I want to assure Mr and Mrs F that, in addition to the original Letter of Claim, I've carefully considered the letter their PR sent Shawbrook on 23 January 2024, which explains why it thinks the debtor-creditor relationship was unfair, and the emails their PR sent our service on 23 July 2025 and 27 August 2025 in response to our investigator's assessment.

In the letter it sent Shawbrook on 23 January 2024, the PR said the following about Mr and Mrs F's purchase in April 2013:

- *Mr and Mrs F were told their 'current investments [the points they purchased in 2009 and 2010] were no longer in demand' and 'to see a profit' and 'get out' they would need to purchase Fractional Club membership, which would 'guarantee a larger return on their money at a reduced timeframe with minimal risk'.*
- *They were also told that Fractional Club members were given priority and their current membership points would become 'obsolete'.*
- *Mr and Mrs F felt they had 'no other option but to invest further', and that Fractional Club membership had 'many benefits mainly a profitable return within a few years'. Membership was sold as an investment in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').*
- *The Supplier didn't tell Mr and Mrs F that if they defaulted on their loan payments their membership would be confiscated by the Supplier, leaving them with nothing.*
- *'The investment's performance has fallen far short of the expectations set during the sales pitch. The promised returns have not materialised, and they now find themselves in a financial predicament due to the misalignment between what was promised and what they have experienced.'*
- *Mr and Mrs F found it difficult to book any of the fractional timeshares.*

In the email it sent our service on 23 July 2024, the PR:

- *Reiterated its point that the Fractional Club membership purchased in April 2013 and essentially varied in July 2014 was sold as an investment in breach of Regulation 14(3) of the Timeshare Regulations.*
- *Argued that the prospect of a financial gain was a motivating factor for Mr and Mrs F and said the 'absence of direct testimony' from Mr and Mrs F was 'due to the complex circumstances and the emotional duress caused by these unfair practices, not a lack of relevance or truthfulness of their claims. [Mr and Mrs F] have consistently maintained that these investment representations were pivotal in their decision'.*
- *Said the investigator's finding that 'there was no evidence the Membership would be confiscated in the event of default ignores an essential point. The terms and conditions do not clarify this consequence, nor was it adequately disclosed to our*

clients. The lack of transparency on such a critical risk is itself a failure in the pre-contractual information…and contributes to the unfairness of the credit relationship. [Mr and Mrs F] were not made aware that defaulting might mean loss of the Membership while remaining liable for the debt and maintenance charges…'.

In the email it sent our service on 27 August 2024, the PR:

- *Referred me to Mr and Mrs F's first-hand testimony, which was provided by email on 27 July 2025; reminded me that I must determine this complaint on the balance of probabilities and that our service 'routinely decides historic mis-selling disputes based on consumer recollection'; and, submitted that Mr and Mrs F's testimony was not an 'isolated narrative' but 'mirrors' the findings of ombudsmen in other complaints about the Supplier and Fractional Club membership.*
- *Reiterated its point, by reference to Mr and Mrs F's testimony, that the membership was sold as an investment in breach of Regulation 14(3).*
- *Says other ombudsmen have upheld 'identical complaints on substantially the same facts' – and says it would be inconsistent and unfair to deny Mr and Mrs F redress in the circumstances and 'perpetuate [their] financial hardship without justification'.*

Before I address what seems to me to be the main reason why the PR says the relationship was unfair – which is that the Fractional Club membership was sold as an investment – I'll briefly consider the other reasons given.

Essentially, Mr and Mrs F's PR says they were misled in April 2013 when the Supplier told them that the only way to 'get out' of their existing membership was to purchase Fractional Club membership, when they could have simply surrendered their points, and that their existing membership points would soon be 'obsolete'. The PR also says they found it difficult to book holidays using their Fractional points. As I've mentioned above, Mr and Mrs F have recently provided some first-hand testimony by email. They don't mention any of these allegations. I've therefore seen no evidence to support the PR's submissions.

Similarly, the PR has provided no evidence to show that Mr and Mrs F's membership would or could be confiscated if they defaulted on their loan payments. In reply to this provisional decision, it should direct me to the specific term or condition that it thinks gives the Supplier the right to confiscate their membership in such circumstances.

Overall, I've seen insufficient evidence to conclude that Mr and Mrs F's credit relationship with Shawbrook was unfair to them under section 140A for any of these reasons.

<u>Shawbrook's alleged breach of Regulation 14(3) of the Timeshare Regulations</u>

I'm satisfied that Mr and Mrs F's Fractional Club memberships meet the definition of a 'timeshare contract' and are 'regulated contracts' for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations says a supplier must not market or sell a proposed timeshare contract as an investment.

The term 'investment' isn't defined in the Timeshare Regulations. But I'll adopt the same definition that was used in R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd *[2023] EWHC 1069 (Admin) (*'Shawbrook v Financial Ombudsman Service'*), which says it's a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.*

The Fractional Club memberships clearly included an investment component in that Mr and

Mrs F's share of the proceeds of the deferred sales offered the prospect of a financial return – whether or not, like all investments, that return was more, less or the same as the sum invested. But it's important to note that the fact that the Fractional Club memberships included an investment component did not, in itself, transgress the prohibition in Regulation 14(3). Regulation 14(3) prohibits the marketing or selling of a timeshare contract as an investment. It doesn't prohibit the existence of an investment component in a timeshare contract or the marketing and/or selling of such a contract per se. In other words, the Timeshare Regulations didn't ban products like the Fractional Club – they simply regulated how they were marketed and sold.

To conclude, therefore, that the Fractional Club memberships were marketed or sold to Mr and Mrs F as an investment in breach of Regulation 14(3), I must be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier as an investment in breach of Regulation 14(3).

On the one hand, it's clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs F, the financial value of their share in the net sales proceeds of the allocated properties along with the investment considerations, like risk and reward, attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's also possible that Fractional Club membership was marketed and sold to Mr and Mrs F as an investment in breach of Regulation 14(3).

However, whether there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome for this complaint for reasons I'll explain, so it's not necessary for me to make a formal finding on this particular issue.

Were the credit relationships between Shawbrook and Mr and Mrs F unfair?

As I think it's possible the Supplier breached Regulation 14(3) when Mr and Mrs F purchased Fractional Club membership in April 2013 and essentially varied it in July 2014, I now need to decide what impact it might have had on the fairness of the relationship between Mr and Mrs F and Shawbrook. I say this because in Plevin v Paragon Personal Finance Ltd *[2014] UKSC 61 (*'Plevin*'), the Supreme Court said:*

> *'Section 140A […] does not impose any obligation and is not concerned with the question whether the creditor or anyone else is in breach of a duty. It is concerned with the question whether the creditor's relationship with the debtor was unfair.'*

What this means is that a breach of Regulation 14(3) doesn't automatically mean the credit relationship is unfair for the purposes of section 140A. Such breaches and their consequences (if there are any) must be considered in the round rather than in a narrow or technical way. For me to conclude that a breach of Regulation 14(3) led to an unfair relationship, I need to see sufficient evidence to conclude, on the balance of probabilities, that the prospect of a financial gain was an important and motivating factor for Mr and Mrs F when they decided to purchase the memberships.

That's why direct testimony from the consumers, in full and in their own words, is so important in a case like this. It allows the decision-maker to assess credibility and consistency, to know precisely what was supposedly said and the context in which it was supposedly said, and, importantly, to hear from the consumers themselves about what mattered to them. It's also important that the decision-maker can see that the Letter of Claim and subsequent submissions genuinely reflect the consumers' testimony.

To be clear, a letter of claim is not evidence – especially when, as here, it contains bare allegations or a mere summary of the consumers' allegations and apparent inconsistencies.

The PR says it didn't provide direct testimony from Mr and Mrs F 'due to the complex circumstances and emotional duress caused by these unfair practices'. I don't see where the complexity is in Mr and Mrs F simply explaining what happened when they purchased the memberships. Similarly, I don't know what the PR means when it refers to 'emotional duress' – I assume it means anxiety or upset – but it doesn't say how this prevented Mr and Mrs F from writing down their recollections in their own time. That it subsequently sent us some first-hand testimony seems to undermine its point.

It's regrettable then that the PR only provided first-hand testimony from Mr and Mrs F on 27 July 2025, which is more than ten years after the events complained about and six years after the Letter of Claim. And it was only provided after our investigator rejected the complaint and explained why. By then, the court had handed down its judgment in Shawbrook v Financial Ombudsman Service*. Experience tells me that the more time that passes between a complaint and the event(s) complained about, the greater the risk that the consumers' recollections will be vague and inaccurate and potentially influenced by discussions with others and even the complaint process itself. Indeed, as there's no evidence on file to corroborate Mr and Mrs F's recent testimony, I think there's a real risk that it was influenced by the PR's submissions and/or the judgment in* Shawbrook v Financial Ombudsman Service*. This means that I can't give their written recollections the weight necessary to conclude that the credit relationships in question were unfair because of a breach of Regulation 14(3).*

I can briefly address the PR's other points.

First, it says other ombudsmen have upheld 'identical complaints on substantially the same facts'. That simply isn't true. As I've explained above, it's the effect of the breach of Regulation 14(3) – if it occurred – on the consumer's behaviour that's ultimately determinative of the claim/complaint, and that's why the consumer's testimony is key. Consumer testimony varies enormously – the content, the level of detail, when it's provided in relation to the events complained of and at what stage of the complaint process. Two complaints may look superficially similar when, in ways that matter, they are not.

Second, while I accept that our service 'routinely decides historic mis-selling disputes based on consumer recollections', that obviously depends on whether or not the decision-maker can place sufficient weight on those recollections in all the circumstances of the case.

In conclusion, I don't think it was unfair for Shawbrook to decline Mr and Mrs F's claim under sections 75 and 75A. I'm also not persuaded that the creditor-debtor relationship with Shawbrook was unfair to them under section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair to direct Shawbrook to compensate Mr and Mrs F.

Mr and Mrs F's PR initially asked us to close the complaint. When I queried this, it sent me an 11-page submission and essentially asked that I take a 'holistic approach' to Mr and Mrs F's complaints. I'll briefly address the PR's submission below.

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.

When considering what is, in my opinion, fair and reasonable in all the circumstances of the case, I'm required by DISP 3.6.3 R of the Financial Conduct Authority ('FCA') Handbook to take into account:

> '(1) relevant:
>
> (a) law and regulations;
> (b) regulators' rules, guidance and standards;
> (c) codes of practice; and
>
> (2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time.'

I've carefully considered the PR's 11-page submission.

First, this complaint is about Shawbrook. I can't consider the conduct of other lenders or the Supplier when the related loan was with another lender.

Second, the PR makes various allegations. It summary, it:

- says Shawbrook facilitated the mis-selling of a product known to be problematic, and failed to conduct adequate due diligence on the Supplier;
- complains of predatory loan structures and inadequate credit assessments;
- says Shawbrook failed to prevent harm (the PR says Shawbrook should have recognised the timeshare product wasn't a legitimate interest and refused to refinance repeatedly);
- reiterated its earlier point that the Fractional Club memberships were sold as investments in breach of Regulation 14(3) of the Timeshare Regulations, which rendered Mr and Mrs F's creditor-debtor relationship with Shawbrook unfair to them under section 140A of the CCA;
- referred me to Regulations 5-7 of the Consumer Protection from Unfair Trading Regulations 2008;
- referred me to the Unfair Contract Terms Act 1977 and Consumer Rights Act 2015;
- referred me to the FCA's DISP rules and the Consumer Credit Sourcebook ('CONC') and, among other things, says Shawbrook lent irresponsibly to Mr and Mrs F (and refers to their 'visible financial distress') and failed to properly assess Mr and Mrs F's section 140A claim;
- reiterated its point that lots of ombudsmen have upheld complaints about Shawbrook on the basis that timeshare memberships were mis-sold as investments;
- sets out what it thinks would be fair compensation from Shawbrook in the circumstances, which includes a full refund of all payments made and a 'minimum' payment of £10,000 as 'compensation for financial loss, distress, and inconvenience'; and,
- says I should also direct Shawbrook to 'correct' Mr and Mrs F's credit file, acknowledge in writing the 'complaints' substance', and train its staff to prevent 'future occurrences'.

The PR hasn't engaged with my provisional decision at all. I made it clear in my provisional

decision that there's a difference between submissions and evidence, and what was lacking with this complaint was evidence I could rely on. In its recent submissions, it's referred me to a witness statement it supplied in relation to a complaint about Lender 3. That statement was supposedly written by Mr and Mrs F in 2015. I won't repeat the reasons why I was wholly unpersuaded of that or my other concerns with it, which I explained in full in my final decision in that case. For this complaint, it suffices to say that at the top of the statement are the handwritten words, 'Sunningdale [illegible] Tenerife, Signature Suites', which makes it clear – as does the content – that the statement is only about the sale(s) of the Signature Collection. As I've explained, this complaint is about the sale of the Fractional Club memberships in April 2013 and July 2014. The '2015' witness statement is therefore of no evidentiary value in this case.

What's left of the PR's submissions are bare allegations – many of which, haven't been made before despite the age of this complaint. At this late stage, I'm not prepared to expand the scope of the complaint to consider new and unsubstantiated complaint points. Where it's repeated or reiterated earlier submissions, the PR hasn't said anything or, importantly, provided any evidence to change my mind.

I therefore remain of the opinion that it wasn't unfair for Shawbrook to decline Mr and Mrs F's claim under sections 75 and 75A. I'm also not persuaded that the creditor-debtor relationship with Shawbrook was unfair to them under 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair to direct Shawbrook to compensate Mr and Mrs F.

My final decision

For the reasons given, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr F to accept or reject my decision before 14 January 2026.

Christopher Reeves
Ombudsman