DRN-6027593

The complaint

Mrs F says Shawbrook Bank Limited ('Shawbrook') has unfairly declined her claim under sections 75 and 75A of the Consumer Credit Act 1974 ('CCA'). And she says her creditor-debtor relationship with Shawbrook was unfair to her 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 6.

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.

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 Mrs F's claim as a complaint and issued its final response letter on 9 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 Mrs F's creditor-debtor relationship with Shawbrook was unfair to her under section 140A of the CCA.

One of our investigators assessed Mrs F's claim under section 75 and rejected the complaint on its merits. He didn't assess her complaint about the fairness of the credit relationship.

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, Mrs F's purchase doesn'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 Mrs F purchased in January 2014 was £39,013. This means that section 75(1) doesn't apply.

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. Mrs F's purchase clearly meets 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 membership she purchased in January 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 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 agreement is a 'related agreement'. And, by virtue of section 56 of the CCA, Shawbrook is legally answerable for the Supplier's actions.

Having considered the entirety of the relationship, I don't think it 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 the sale, and any relevant training material.
(2) The information provided by the Supplier at the time of the 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 the sale.
(4) The inherent probabilities of what's likely to have happened given the circumstances of the sale.

It's worth noting that neither the Letter of Claim nor the letter the PR sent Shawbrook on 23 January 2024, which explains why it thinks the debtor-creditor relationship was unfair, mentions the January 2014 sale specifically. They mention Sale 5 and Sale 7 instead. However, I've assumed that the PR's allegation that the Supplier sold Fractional Club membership as an investment applies to Sale 6 too – even if it doesn't say so explicitly. And I've assumed the allegation that 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, and the allegation that Mr and Mrs F found it difficult to book holidays, apply to Sale 6 too. I've also considered some first-hand testimony from Mr and Mrs F that the PR provided by email on 27 July 2025 in relation to the other complaint about Shawbrook.

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.

In their first-hand testimony, Mr and Mrs F don't say they found it difficult to book holidays. I've therefore seen no evidence to support this allegation.

Similarly, the PR has provided no evidence to show that Mrs F's membership would or could be confiscated if she defaulted on her 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 her membership in such circumstances.

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

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

I'm satisfied that Mrs F's Fractional Club membership meets the definition of a 'timeshare contract' and is a 'regulated contract' 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 Mrs F's share of the proceeds of the deferred sale 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 membership 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 membership was marketed or sold to 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 her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her 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 Mrs F, the financial value of her share in the net sales proceeds of the allocated property 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 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.

Was the credit relationship between Shawbrook and Mrs F unfair?

As I think it's possible the Supplier breached Regulation 14(3) when Mrs F purchased Fractional Club membership in January 2014, I now need to decide what impact it might have had on the fairness of the relationship between 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 Mrs F when she decided to purchase the membership.

That's why direct testimony from the consumer, in full and in her 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 consumer herself about what mattered to her. It's also important that the decision-maker can see that the Letter of Claim and subsequent submissions genuinely reflect the consumer's 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 consumer's' allegations, apparent inconsistencies and doesn't even refer directly to the relevant sale.

Regrettably, 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 consumer's 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 relationship in question were unfair because of a breach of the relevant prohibition.*

In conclusion, I don't think it was unfair for Shawbrook to decline Mrs F's claim under sections 75 and 75A. I'm also not persuaded that the creditor-debtor relationship with Shawbrook was unfair to her 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 Mrs F.

Shawbrook accepted my provisional decision.

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 submissions 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 membership in January 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 Mrs F's claim under sections 75 and 75A. I'm also not persuaded that the creditor-debtor relationship with Shawbrook was unfair to her 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 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 to accept or reject my decision before 14 January 2026.

Christopher Reeves
Ombudsman