DRN-6052012

The complaint

Mr and Mrs A's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') 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 claims under Section 75 of the CCA.

Sadly, in the course of this complaint Mr A has passed away. Mrs A has indicated that his interest in the complaint has passed to her, although the relevant documents to confirm that haven't been provided to me.

Background to the complaint

Mr and Mrs A were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 9 January 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 20,000 fractional points which, after trading in 20,000 points from their existing 'European Collection' membership with the Supplier, cost £13,600.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs A more than just holiday rights. It also included a share in the net sale proceeds of a property named on their Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr and Mrs A paid for their Fractional Club membership by taking finance of £13,600 from the Lender (the 'Credit Agreement').

Mr and Mrs A – using a professional representative (the 'PR') – wrote to the Lender on 16 January 2017 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns have not changed since they were first raised, and as both sides are familiar with them, it's not necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr and Mrs A's concerns as a complaint and issued its final response letter on 20 February 2017, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, ultimately rejected the complaint on its merits.

Mr and Mrs A disagreed with the Investigator's assessment and asked for an Ombudsman's decision. So the complaint was passed to me to decide. I considered the matter, and I thought the complaint ought to be upheld. So I issued a provisional decision (the 'PD'), and I invited both parties to respond before issuing a final decision.

The Lender responded stating it did not accept the PD, and it provided some further comments it wished to be considered. The PR confirmed Mrs A and the estate of Mr A accepted the PD.

In light of the parties' responses to the PD, I'm now finalising my decision on this complaint. As I've noted, in the course of the complaint sadly Mr A has passed away and in recognition of Mrs A's feelings, I've only referred to his passing where it's relevant to a particular point or conclusion.

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.

Having done that afresh, I still think this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and/or selling Fractional Club membership to Mr and Mrs A as an investment, which, in the circumstances of this complaint, rendered the credit relationship between them and the Lender unfair to them for the purposes of Section 140A of the CCA.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it's to decide what's fair and reasonable in the circumstances of this complaint. So, while I recognise that there are a number of aspects to this complaint, it's not necessary to make formal findings on all of them. This includes the allegations that:

- The Supplier misrepresented Fractional Club membership to Mr and Mrs A, and it breached the Purchase Agreement with them, so the Lender should have accepted and paid their claims under Section 75 of the CCA;

- The credit relationship between Mr and Mrs A and the Lender was unfair to them because:

    - The Lender failed to carry out the right creditworthiness assessment;

    - The Supplier unduly pressured them to enter into the Purchase Agreement and the related Credit Agreement;

    - The Lender paid commission to the Supplier that wasn't disclosed to them;

because, even if those aspects of the complaint ought to succeed, the redress I've set out puts Mrs A and the estate of Mr A in the same or a better position than they would be in if the redress was limited to the claims for misrepresentation and/or breach of contract under Section 75 of the CCA, or to the unfair credit relationship claim under Section 140A of the CCA for a different reason.

The legal and regulatory context

In considering what's fair and reasonable in all the circumstances of the complaint, I'm required under DISP 3.6.4 R 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 ombudsman decisions on very similar complaints. And with that being the case, it's not necessary to set it out here.

Section 140A of the CCA: did the Lender participate in an unfair credit relationship?

Having considered the entirety of the credit relationship between Mr and Mrs A and the Lender along with all of the circumstances of the complaint, I think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. The Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale;

2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;

3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; and

4. The inherent probabilities of the sale given its circumstances.

I have then considered the impact of these on the fairness of the credit relationship between Mr and Mrs A and the Lender.

The Supplier's breach of Regulation 14(3) of the Timeshare Regulations

The Lender does not dispute, and I'm satisfied, that Mr and Mrs A's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club membership as an investment. This is what the provision said at the Time of Sale:

> *"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."*

But Mr and Mrs A have said that the Supplier did exactly that at the Time of Sale – saying the following in a statement provided to us during the course of this complaint:

> *"Then, in 2013, we were invited to a weekend in Edinburgh where, along with the wining and dining, we were introduced to fractional ownership. The premise was entrancing. Convert to this, and then, when you're ready to get out as you get older, you can leave with a profit its an investment for your future. You don't have to own in perpetuity. The sales pitch was very convincing.* (sic)*"*

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and 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.

I said in my PD that Mr and Mrs A's share in the Allocated Property clearly constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that turned out to be more than what they first put into it. The Lender says in its response that Fractional Club membership offered a return of *some* of the money paid for it, rather than a return *on* the money paid for it (i.e. a profit), its suggestion appearing to be that membership was not an investment and so the Supplier did not sell membership as such. However, it's not apparent from what the Lender has said why membership could not (whether likely or not) have provided a return greater than the amount paid for it (i.e. a profit). And in any case, the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It does not prohibit the mere existence of an investment element in a timeshare contract, or prohibit the marketing and selling of such a timeshare contract *per se*.

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs A as an investment in breach of Regulation 14(3), I have to 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 evidence in this complaint 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 A, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr and Mrs A as an investment.

For example, the terms and conditions of the Purchase Agreement said:

> *"1. You should not purchase Your* [Supplier] *Fractional Points as an investment in real estate. The Purchase Price paid by You relates primarily to the provision of memorable holidays for the duration of Your ownership. You are at liberty to dispose of Your* [Supplier] *Fractional Points at any time prior to the Sale Date in accordance with Rule 7 of the Rules of the Owners Club."*

Additionally, the 'Customer Compliance Statement/Declaration to Treating Customers Fairly', which Mr and Mrs A signed at the Time of Sale, said:

> *"5. We understand that the purchase of our* [Supplier] *Fractional Points is an investment in our future holidays, and that it should not be regarded as a property or financial investment. We recognize that the sale price achieved on the sale of the Property in the Owners Club (and to which our* [Supplier] *Fractional Points have been attributed) will depend on market conditions at that time."*

I explained in my PD that in my view, weighing up what happened in practice is rarely as simple as looking at the contemporaneous paperwork. Mr and Mrs A would only have been provided with the contractual paperwork after any oral sales presentation and after they had already agreed to take out Fractional Club membership. Furthermore, the disclaimers I highlighted above seem not to apply directly to Mr and Mrs A's particular circumstances as they did not acquire any additional holiday rights at the Time of Sale. So, they were not in effect purchasing *"the provision of memorable holidays,"* nor were they making *"an investment in* [their] *future holidays,"* as they already held identical holiday rights under their existing European Collection membership. I said that in my view, the disclaimers did not deal with the substance of what Mr and Mrs A were actually buying.

The Lender says in its response that I unfairly dismissed the disclaimers in the sales documents, particularly as Mr and Mrs A signed them, and that these documents provide no reason to consider that Fractional Club membership was marketed and sold to them as an investment. I agree with the Lender that the sales documents I've seen do not provide clear evidence that the Supplier sold membership to Mr and Mrs A as an investment. But like I have said, weighing up what happened in practice is rarely as simple as looking at the contemporaneous paperwork, particularly in this case given its circumstances and what I've said above about the disclaimers. Indeed, Mr and Mrs A's allegation is largely based on what they said the Supplier *told* them at the Time of Sale. So I don't consider the fact Mr and Mrs A signed documents which said membership was not an investment is conclusive of how the Supplier sold it to them. And having considered if it's more likely than not that the Supplier sold or marketed membership to them as an investment, for reasons I'll now come on to, given the facts and circumstances of this complaint, I think the Supplier is likely to have breached Regulation 14(3) of the Timeshare Regulations.

How the Supplier marketed and sold the Fractional Club membership

During the course of the Financial Ombudsman Service's work on complaints about the sale of timeshares, the Supplier has provided training material and internal documentation that it said was relevant to how it trained its sales staff. Some of that material emphasised the benefits of owning an asset linked to an interest in real estate, but other parts of the material reiterated the need for its sales staff not to sell membership as investments. More recently, the Supplier has explained that much of that material was not in fact used when selling memberships and was provided in error.

Given this, it's not clear to me how the Supplier trained its sales staff, and I have not been provided with sales or marketing materials that would have been shown to prospective members, such as Mr and Mrs A. In light of this, I have based my findings on all of the available evidence and arguments that include Mr and Mrs A recollections of the sale, the sales documentation, the Supplier's and the Lender's arguments, and the wider circumstances surrounding the purchase.

The circumstances of the sale

At the Time of Sale, Mr and Mrs A were existing European Collection members.
Mr and Mrs A have said their ownership of timeshare products began in the 1990s, and there's evidence on file showing they had been members of the Supplier's European Collection since December 2009. It's therefore likely they had a good understanding of the benefits (i.e. holiday rights) their points under that membership provided to them.

The Purchase Agreement involved trading in 20,000 European Collection points and a payment of £13,600 for 20,000 fractional points. Each fractional point provided Mr and Mrs A with the same holiday rights as each European Collection point. As such, Mr and Mrs A did not acquire any additional holiday rights under this Purchase Agreement, but it still required them to pay £13,600.

I have considered the possibility that the Supplier sold Fractional Club membership to Mr and Mrs A on the basis of the shorter membership term it offered (a little under 15 years), compared to their existing European Collection membership. Mr and Mrs A's submissions consistently refer to Fractional Club membership providing them with a means to leave their membership when they wanted to. So I think it's likely that the Supplier would have mentioned the shorter membership term during the sales process. However, I think the evidence suggests that would not have been the only reason put forward by the Supplier as a reason for Mr and Mrs A to purchase Fractional Club membership. I say this because they did not convert all of their existing points to fractional points, so their existing membership would have continued to run to its existing end date.

In these circumstances, I find it inherently probable that the Supplier would have persuaded Mr and Mrs A to purchase Fractional Club membership by highlighting the prospect of a financial gain. Indeed I find it difficult to see how, in the circumstances of this case, the Supplier would have persuaded them to enter into the Purchase Agreement, and take on a significant financial commitment in doing so, without emphasizing the prospects of a financial gain from membership. And as I'll now explain, Mr and Mrs A have said the Supplier did use the prospect of a financial gain to persuade them to purchase membership.

What the parties have said

As I set out above, Mr and Mrs A have said they were told "fractional ownership" would allow them to *"get out"* of their timeshare membership, and *"leave with a profit* [as] *its an investment for* [their] *future."*

I said in my PD that I thought Mr and Mrs A's recollections of how the Supplier marketed and sold Fractional Club membership to them were relatively limited and generalised. They provided very little colour or context to the allegation that the Supplier marketed and sold membership to them as an investment. There's also evidence to suggest that part of their recollection was inaccurate. The Purchase Agreement Mr and Mrs A signed at the Time of Sale recorded that it was signed at a resort in Tenerife, not in Edinburgh as they recalled. Given that document was contemporaneous from the Time of Sale, I thought it was a more reliable indication of where the purchase took place.

I also said I was mindful that this particular allegation was only raised after the judgment in *Shawbrook & BPF v FOS*[1], and Mr and Mrs A's witness statement was not signed or dated. As such, there was a possibility that their statement was influenced by that judgment. But I said that in my view, this did not mean the entirety of Mr and Mrs A's recollections were inaccurate and could bear no weight.

I explained that was because the PR had also provided us with a questionnaire Mr and Mrs A had completed to support their claims against the Lender, which included the following questions and answers:

[1] R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS').

"Were you ever guaranteed a profit at the end of your membership?" Mr and Mrs A answered by ticking a box for "yes."

"If the answer to [question above] *is 'yes', how much profit were you guaranteed to make?"* Mr and Mrs A answered: *"Unspecified".*

"What were the main reasons for you to enter into a contract with the timeshare owner?" Mr and Mrs A answered: *"It gave us a get-out clause with money back. Also we could make money by renting through marketing who would pay us on sales they made by renting our weeks."*

The questionnaire was signed by Mr and Mrs A, and dated 15 August 2017 – before the judgment in *Shawbrook & BPF v FOS.* I thought the answers they gave in that questionnaire made out that they had been given an expectation of profiting from their Fractional Club membership, which was consistent with what they said in their witness statement. And taken alongside the circumstances of the sale (which I set out above), their submissions appeared to me to be credible.

The Lender said in response to my PD that, in summary, my thoughts about Mr and Mrs A's recollections, the possibility they were influenced by the judgment in *Shawbrook & BPF v FOS*, and the fact this particular allegation was not made in their initial complaint submissions, should lead me to not rely on their recollections. It also said I should not rely on the questionnaire because it's not clear why it was produced when it was, it asked leading questions, and its apparent Mr and Mrs A's answers do not relate to their purchase at the Time of Sale. It said the age they said they were at the time and the location where they said the purchase took place are not consistent with the factual circumstances of their purchase at the Time of Sale.

I have thought very carefully about what the Lender has said, but I don't find its arguments persuade me that I should not place any weight on what Mr and Mrs A said in their witness statement and the questionnaire. I acknowledge the age and location details Mr and Mrs A gave on the questionnaire are not correct. However, I have now seen another questionnaire completed by Mr and Mrs A with the age and location details that reflect the factual circumstances of their purchase at the Time of Sale. This questionnaire asked the same questions as the questionnaire I referred to above, and Mr and Mrs A gave the same answers to all the other questions on both questionnaires.

The PR provided this questionnaire to this Service on a different case it referred to us on behalf of Mrs A against a different lender, so the lender referred to is not the Lender in this case. But that does not lead me to conclude I cannot rely on Mr and Mrs A's answers on the questionnaire considering the number of purchases they made in a relatively short period of time that were financed by different lenders. As a result, I'm satisfied that in the circumstances of this case, I can rely on the answers Mr and Mrs A gave on these questionnaires. And as I still find those answers consistent with what they said in their witness statement, in view of the circumstances of the sale (which I set out above), I still think what they have said is credible.

Furthermore, I said in my PD that as I understood it, Mr and Mrs A's reservation history showed they rented out their fractional weeks six times between June 2014 and June 2016. The Lender has said in its response to my PD that they successfully rented out their fractional weeks 19 times during that period. And despite the Lender's view that this does not show membership was sold to them as an investment, I find this adds further weight to the credibility of Mr and Mrs A's comments that they viewed Fractional Club membership as means of making money.

So on balance, I find the Supplier did talk about the investment element of Fractional Club membership at the Time of Sale as a reason for Mr and Mrs A to purchase it. I also find, based on the circumstances of the sale and Mr and Mrs A's submissions, the Supplier would likely have gone beyond merely describing how Fractional Club membership worked. I think that, whether or not the Supplier used the word "investment", the Supplier would likely have given Mr and Mrs A the impression that they were likely to make a profit on what they paid for membership. It follows, I think the Supplier breached Regulation 14(3) at the Time of Sale.

Was the credit relationship between the Lender and Mr and Mrs A rendered unfair?

Having found that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr and Mrs A and the Lender under the Credit Agreement and related Purchase Agreement, as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to that, if I'm to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs A and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

On my reading of all the evidence provided to me, the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr and Mrs A decided to go ahead with their purchase. Their testimony from their submissions clearly sets out that they went ahead with their purchase because they saw it as an opportunity to make a profit, in particular by renting out their fractional weeks, and the actions they took after their purchase in that respect are consistent with that.

I acknowledge Mr and Mrs A's testimony also sets out that Fractional Club membership provided them with a *"get-out clause."* I realise the shorter membership term may have held some appeal to Mr and Mrs A, but the evidence provided to me does not suggest this was important to them. There's no indication they were looking to exit their timeshare membership at the time or at some point in the future, and the fact they did not convert all of their existing points to fractional points is inconsistent with the assertion they decided to make their purchase because of the shorter membership term.

All of that does not mean they were not interested in holidays. Their own testimony and the circumstances surrounding their purchase demonstrates that they quite clearly were. And that is not surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs A have said (plausibly in my view) that Fractional Club membership was marketed and sold to them at the Time of Sale as something that offered them more than just holiday rights, on the balance of probabilities, I think the prospect of a financial gain from membership was an important and motivating factor in their decision to go ahead with their purchase. And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision they ultimately made.

Mr and Mrs A did not say or suggest, for example, that they would have pressed ahead with the purchase in question had the Supplier not led them to believe that Fractional Club membership was an appealing investment opportunity. And as they faced the prospect of borrowing and repaying a substantial sum of money while subjecting themselves to long-term financial commitments, without the encouragement of the prospect of a financial gain from Fractional Club membership, I'm not persuaded that they would have pressed ahead with their purchase regardless.

Conclusion

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Mr and Mrs A under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A. And with that being the case, taking everything into account, I think it's fair and reasonable that I uphold this complaint.

Putting things right - Fair compensation

Having found that Mr and Mrs A would not have agreed to purchase Fractional Club membership at the Time of Sale were it not for the breach of Regulation 14(3) of the Timeshare Regulations by the Supplier (as deemed agent for the Lender), and the impact of that breach meaning that, in my view, the relationship between the Lender and Mr and Mrs A was unfair under Section 140A of the CCA, I think it would be fair and reasonable to put Mrs A and the late Mr A's estate in the position they would have been in had they not purchased the Fractional Club membership (i.e. not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mrs A and the personal representative of the late Mr A agree to assign to the Lender their Fractional Points, or hold them on trust for the Lender if that can be achieved.

Mr and Mrs A were existing European Collection members, and part of their membership was traded in against the purchase price of Fractional Club membership. Under their European Collection membership, they had a number of European Collection Points. And, like Fractional Club membership, they had to pay annual management charges as European Collection members. So, had Mr and Mrs A not purchased Fractional Club membership, they would have always been responsible for paying an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Mr and Mrs A from the Time of Sale as part of their Fractional Club membership should amount only to the difference between those charges, and the annual management charges they would have paid as ongoing European Collection members.

So, here's what I think needs to be done to compensate Mrs A and the late Mr A's estate with that being the case – whether or not a court would award such compensation:

(1) The Lender should refund Mrs A and the late Mr A's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.

(2) In addition to (1), the Lender should also refund the difference between Mrs A and the late Mr A's Fractional Club annual management charges paid after the Time of Sale, and what their European Collection annual management charges would have been had they not purchased Fractional Club membership.

(3) The Lender can deduct:

i. The value of any promotional giveaways that Mr and Mrs A used or took advantage of;

ii. The "travel savings bonus" of £1,000 they received in connection with their purchase;

iii. Any payments Mr and Mrs A received from renting out their fractional weeks through the Supplier's scheme; and

iv. The market value of the holidays* Mr and Mrs A took using their Fractional Points, *if* the Points value of the holiday(s) taken amounted to more than the total number of European Collection Points they would have been entitled to use at the time of the holiday(s) as ongoing European Collection members. However, this deduction should be proportionate and relate only to the additional Fractional Points that were required to take the holiday(s) in question.

For example, if Mr and Mrs A took a holiday worth 2,550 Fractional Points and they would have been entitled to use a total of 2,500 European Collection Points at the relevant time, any deduction for the market value of that holiday should relate only to the 50 additional Fractional Points that were required to take it. But if they would have been entitled to use 2,600 European Collection Points, for instance, there shouldn't be a deduction for the market value of the relevant holiday.

(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)

(4) Simple interest** at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.

(5) The Lender should remove any adverse information recorded on Mrs A's credit file in connection with the Credit Agreement reported within six years of this decision.

(6) If the Fractional Club membership is still in place at the time of this decision, as long as Mrs A and the personal representative of the late Mr A agree to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of their Fractional Club membership.

*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it's not practical or possible to determine the market value of the holidays Mr and Mrs A took using their Fractional Points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect their usage.

**HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give Mrs A and the personal representative of the late Mr A a certificate showing how much tax it's taken off if they ask for one.

Finally, as I noted at the beginning of this decision, the relevant documents to confirm who legally holds the late Mr A's interest in this complaint have not been provided to me such that I can be entirely satisfied that interest is held by Mrs A and nobody else. That leaves open the possibility, however small, that the Lender could face a future claim from an as yet unidentified party who holds that legal interest. So if the Lender wishes to seek an indemnity from Mrs A against any liability for such a claim, it can do so.

My final decision

It's my decision to uphold Mrs A and the estate of Mr A's complaint about Shawbrook Bank Limited and to direct it to pay compensation and take the steps as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and the estate of Mr A to accept or reject my decision before 28 April 2026.

Asa Burnett
Ombudsman