DRN-6115508

The complaint

Mr C says Shawbrook Bank Limited ('Shawbrook') has unfairly declined his claim under section 75 of the Consumer Credit Act 1974 ('CCA'). And he says his creditor-debtor relationship with Shawbrook was unfair to him under section 140A of the CCA.

What happened

In April 2013, Mr C and another ('Ms H') purchased a timeshare membership – which I'll call 'Fractional Club' membership – from a timeshare provider (the 'Supplier'). It included 1,050 fractional points. The membership was asset backed – which means it gave Mr C and Ms H more than just holiday rights. It included a share of the net sale proceeds of a property named on the purchase agreement (the 'Allocated Property') after the membership term ended. It cost £13,800 (including fees). Mr C alone borrowed the full amount from Shawbrook to pay for it. This means he's the only eligible complainant and I'll refer to him throughout.

In June 2018, Mr C – using a professional representative ('PR1') – wrote to Shawbrook (the 'Letter of Claim') to make a claim under section 75 of the CCA. Specifically, the Letter of Claim said:

- The Supplier didn't conduct a proper assessment of Mr C's financial position and his ability to repay the loan.
- The Supplier applied 'considerable' pressure on Mr C.
- The Supplier 'breached EU law'.
- The Supplier made two misrepresentations: first, it told him he would receive 'monies back from the sale of his 'investment'', which he now thinks is very unlikely; second, it guaranteed that Mr C would 'exit' the Fractional Club membership after a finite period, but this isn't true as a purchaser must first be found.
- Specific terms were unfair by reference to the Unfair Terms in Consumer Contracts Regulations 1999, which rendered the relationship unfair.

PR1 referred the complaint to our service when it didn't receive a substantive response from Shawbrook.

Shawbrook issued its final response letter on 22 January 2019. It dealt with the Letter of Claim as a complaint and rejected the complaint on every ground.

One of our investigators rejected the complaint on its merits.

PR1 asked that an ombudsman make a final decision, and it provided a 36-page submission 'to assist a number of purchasers' of Fractional Club membership.

In February 2023, Mr C changed his professional representative to 'PR2'.

In August 2023, PR2 made some further submissions. Specifically, it said Mr C was told the Fractional Club membership would be a 'good investment', and that at the end of the term, he would 'get [his] money back with a profit'. PR2 specifically referred to *R (on the*

application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd [2023] EWHC 1069 (Admin) ('*Shawbrook v Financial Ombudsman Service*'), which confirmed that a creditor-debtor relationship could be unfair under section 140A of the CCA if the timeshare membership was sold as an investment. And it said the contract should be void for illegality.

Another investigator reconsidered the complaint but again rejected it on its merits.

PR2 asked that an ombudsman make a final decision.

I issued a provisional decision on 12 January 2026, which explained why I didn't intend to uphold this complaint. It included the following provisional findings:

I'm not currently minded to uphold this complaint.

Before I explain why, I want to make it clear that my role as an ombudsman isn't to address every single point that's been made to date – it's to decide what's fair and reasonable in the circumstances of this complaint. So if I haven't commented on, or referred to, something that either party has said, it doesn't mean I haven't considered it.

Section 75

Section 75 of the CCA protects consumers who buy goods and services on credit. It says, if certain conditions are met, that the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier. A misrepresentation is an untrue statement made by one party to another that induces that party to enter into a contract.

In the Letter of Claim, PR1 says the Supplier misrepresented the Fractional Club membership in two ways: it told Mr C he would receive 'monies back from the sale of his 'investment'', which he now thinks is very unlikely; and, it told him the membership had a guaranteed end date when that wasn't true.

I don't think it was untrue to say that Mr C would receive money back from the sale of the Allocated Property. This was a key feature of Fractional Club membership, and I don't think it was a misrepresentation.

And while I understand that the sale of the Allocated Property could be postponed in certain circumstances according to the Fractional Club rules, I haven't seen any evidence to support the allegation that Mr C was given a guarantee by the Supplier that the Allocated Property would be sold on a specific date. PR2 has provided a signed witness statement from Mr C, signed in January 2024, and this make no mention of any guarantee.

In its further submissions, PR2 says the Supplier told Mr C that he'd have no problems booking holidays whenever he wanted but this wasn't true. Actually, Mr C says he was told he 'would have 'first dibs' on accommodation and dates that I wanted as opposed to non-members who were at the back of the queue'. However, Mr C says 'availability was extremely poor at best and at worst non-existent and contrary to what I was told'. I appreciate that Mr C may have been disappointed with the availability of accommodation. However, I'm not persuaded that it was a misrepresentation to say that he'd have 'first dibs' on accommodation compared to non-members, which is not the same as saying he'd have no problems booking holidays whenever he wanted.

Based on what I've seen so far, I'm not persuaded that there was a misrepresentation or a breach of contract by the Supplier for which Shawbrook is legally answerable. It follows that I don't think it was unfair for Shawbrook to decline the claim under section 75.

Section 140A

Section 140A says a court may make an order if it thinks the relationship between a creditor and a debtor is unfair to the 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 sale, and any relevant training material.*
2. *The information provided by the Supplier at the time of sale, including the contracts and any disclaimers made by the Supplier.*
3. *The commission arrangements between Shawbrook and the Supplier at the time of sale and the disclosure of those arrangements.*
4. *All the evidence provided by both parties on what was supposedly said and/or done at the time of sale.*
5. *The inherent probabilities of what's likely to have happened given the circumstances of each sale.*

The Supplier's sales and marketing practices at the time of sale

There are several reasons why PR1 and PR2 say Mr C's creditor-debtor relationship with Shawbrook was unfair to him.

PR1 says that the right affordability checks weren't carried out. But even if I were to find that Shawbrook failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr C was actually unaffordable before also concluding that he lost out as a result and then consider whether the credit relationship with Shawbrook was unfair to him for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for him.

PR1 and PR2 both say Mr C was subject to a long, high-pressure sale. Mr C says the 'pressure came from the length of the presentation whereby we were not allowed to leave until the end of the presentation'. He also says the salesperson told them that his salary was wholly dependent on him making a sale, and 'sat there with the contract to sign'. I appreciate that Mr C may have felt weary after a sale process that went on for a long time, but I'm not persuaded that the Supplier's conduct, as described, crossed the line. What's more, Mr C was given a 14-day cooling off period and he hasn't provided a credible explanation for why he didn't cancel the membership during that time. In the circumstances, I've seen insufficient evidence to conclude that Mr C made the decision to purchase Fractional Club membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr C's credit relationship with Shawbrook was rendered unfair to him under Section 140A for any of the reasons above. However, PR2 says the Fractional Club membership was sold and/or marketed as an investment in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'), and that this renders the relationship unfair under section 140A.

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

I'm satisfied that the 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 membership clearly included an investment component in that Mr C'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 Mr C 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 him as an investment, i.e. told him or led him to believe that Fractional Club membership offered him 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 the 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 members, such as Mr C, the financial value of his share in the net sales proceeds of the Allocated Property, along with the investment considerations, like the associated risk and reward.

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 C 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.

<u>Would the credit relationship between Shawbrook and Mr C have been rendered unfair to him had there been a breach of Regulation 14(3) of the Timeshare Regulations?</u>

As I think it's possible the Supplier breached Regulation 14(3) at the time of each sale, I now need to decide what impact it might have had on the fairness of the relationship between Mr C 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 a breach and its 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 C when he decided to purchase the membership.

As I've explained above, in the Letter of Claim, PR1 says Mr C was told he'd get 'monies back' from the sale of his 'investment'. Although it has used the word 'investment', I don't think 'monies back' equates to a profit. And PR1 doesn't say more or specifically allege a breach of Regulation 14(3) of the Timeshare Regulations despite making several other detailed allegations. If the investment component was particularly important to Mr C, I would have expected more to have been said in the Letter of Claim.

PR2's late submissions in August 2023 are identical to the submissions they've made in other cases, so when it says, for example, 'Our Client was told that Fractional Ownership would be a 'good investment'…', I've taken that to be a submission rather than evidence from Mr C.

I've carefully considered Mr C's witness statement dated 19 January 2024, in which he says:

> *'No representation was made regarding specific forecasts by the representative as to what the financial return would be, but it was pointed out that property over that period of time would increase and there should be a return, possibly a very good return, in the future that may include an overall profit. This was appealing to me as I would get back some or all of my money over time whilst enjoying holidays in the meantime.'*

PR2 has confirmed that it doesn't have an earlier witness statement for Mr C. I'm mindful, therefore, that it was drafted more than 11 years after the event complained about and more than five 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 the event complained about and the consumer writing down their recollections, the greater the risk that those 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 C's very recent recollections, I think there's a real risk that his recollections were influenced by PR2's submissions and/or the judgment in Shawbrook v Financial Ombudsman Service. This means that I can't give them the weight necessary to conclude that the credit relationship in question was unfair because of a breach of Regulation 14(3).

<u>The information provided by the Supplier at the time of sale</u>

PR2 says that the Supplier didn't give Mr C sufficient information about the ongoing costs of Fractional Club membership. I acknowledge it's possible that the Supplier didn't give Mr C sufficient information, in good time, about the various charges he may have to pay as a Fractional Club member. But even if that was the case, I haven't been provided with any evidence that shows the terms governing the fees were applied unfairly in practice or otherwise led to an unfairness that warrants a remedy.

PR1 also says that there are some unfair contract terms in the purchase agreement. But, again, it hasn't provided any evidence that those terms were operated unfairly against Mr C in practice, nor that such terms led him to behave in a way that was to his detriment. I'm therefore not persuaded that any of the terms governing the Fractional Club membership are likely to have led to an unfairness that warrants a remedy even if they could be said to be unfair contract terms (which I make no formal finding on).

Overall conclusion

In conclusion, given the facts and circumstances of this complaint, I don't think Shawbrook acted unfairly when it declined Mr C's section 75 claim. And I'm not persuaded that Shawbrook was party to a credit relationship with him under the credit agreement and related purchase agreement that was unfair to him for the purposes of 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 C.

Shawbrook says it accepts my provisional decision.

PR2 has confirmed receipt of my provisional decision but it hasn't made any further submissions or provided any new information or evidence.

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.

As neither party has provided any further comments or evidence, I confirm my provisional findings. My reasons remain the same.

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 Mr C to accept or reject my decision before 26 February 2026.

Christopher Reeves
Ombudsman