

The complaint

Mr and Mrs W say their creditor-debtor relationship with Shawbrook Bank Limited ('Shawbrook') was unfair to them under section 140A of the Consumer Credit Act 1974 ('CCA').

What happened

In May 2014, Mr and Mrs W purchased a timeshare membership I'll call 'Fractional Club' from the Supplier, which included 1,220 points. The membership was asset backed – which means it gave Mr and Mrs W more than just holiday rights. It included a share of the net sale proceeds of a property named on the agreement (the 'Allocated Property') after the membership term ended. It cost £20,427. However, Mr and Mrs W received a 'trade-in' value of £12,498 for their existing membership, which left £7,929 to pay. Mr and Mrs W borrowed the full sum from Shawbrook to pay it.

In June 2018, Mr and Mrs W – using a professional representative ('PR') – wrote to Shawbrook (the 'Complaint Letter') to complain that the membership was 'mis-sold' by the Supplier. (It didn't say why it thought Shawbrook was answerable for the Supplier's alleged wrongdoing.)

In January 2019, Shawbrook issued its final response letter. It rejected the complaint.

Mr and Mrs W's PR then referred the complaint to our service.

This complaint has been considered separately by two different investigators. Both have rejected it on its merits.

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

I issued a provisional decision on 16 January 2026, which explained why I didn't intend to uphold this complaint. It included the following provisional findings:

The Complaint Letter is very brief. It says:

- *Mr and Mrs W 'got the usual sales talk' that buying the Fractional Club membership was a 'great thing to do' because it 'would be turned into big money by selling the Resort'. The PR rejects the Supplier's contention that, at the time of sale, it made no representation as to the future price or value of the Allocated Property – it says 'this is exactly the opposite of the sales pitch [the Supplier] give[s] to all [its] clients'. It says: 'Every one tells the same story, that it will be sold and they would get a huge profit on their investment'.*
- *The annual maintenance fees are now 'horrendously expensive' and 'availability is at a new low for members', whereas anyone can now book accommodation at the Supplier's resorts using a popular online travel agent with more availability and for less than members' annual maintenance fees.*

Later, in response to the first investigator's assessment, the PR said the Supplier had

'dismissed' its sales staff and, consequently, there was no one to sell the Allocated Property when the membership term ended. It also said that if you multiply the purchase price by 52, that's how much the Allocated Property would need to be sold for so that Mr and Mrs W would recover the purchase price. And it says that figure is much higher than the average sale price for a comparable property.

And in response to the second investigator's assessment, the PR:

- *said Mr and Mrs W didn't acquire any additional benefits when they 'upgraded' in May 2014, they 'only continued the rights they already had';*
- *asked me to consider the complaint as a claim under section 140A of the CCA;*
- *specifically referred me to the High Court judgment in 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,*
- *argued that Mr and Mrs W's Fractional Club membership didn't meet the definition of a 'timeshare contract' and was, instead, a collective investment scheme ('CIS'), which the Supplier was neither qualified nor authorised to sell.*

As I've explained above, the PR didn't say in the Complaint Letter why it thought Shawbrook was answerable for the Supplier's alleged wrongdoing. Our investigators considered the complaint by reference to sections 75 and 140A of the CCA. Later, the PR explicitly asked that we consider it as a claim under 140A – so that's what I'll do. I want to assure Mr and Mrs W (and the PR) that it doesn't make a difference: if I were minded to uphold the complaint because of a breach of contract or a misrepresentation by Supplier under section 75, I could uphold the complaint for the same reason (and award the same redress) under section 140A.

As it is, 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 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.*

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.

First, I'm satisfied that the Fractional Club membership meets the definition of a 'timeshare contract' under regulation 7 of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'). The High Court made this clear in Shawbrook v Financial Ombudsman Service.

Second, the PR's submission that Mr and Mrs W didn't acquire any additional benefits when they 'upgraded' in May 2014 is incorrect. In March 2014, they purchased a membership with 1,220 points. For the purpose of allocating the proceeds of the deferred sale of the Allocated Property (A203 at a resort called Paradise) it was '2 weeks'. The membership they surrendered at the time of sale – which they purchased in October 2013 – included 900 points and was worth 1 week at a different resort.

Third, as the membership term hasn't ended, any claim for breach of contract on the basis that the Allocated Property may not be sold is speculative and premature. The PR says that if Mr and Mrs W wait until then to make a claim, it will be too late under the Limitation Act 1980 ('LA'). I disagree. If there's a breach of contract in the future, Mr and Mrs W will have six years from the date of the breach to make a claim.

Fourth, the PR hasn't provided any evidence to show the annual maintenance fees are 'horrendous' or that there's limited availability for members, still less sufficient evidence to show that there was an actionable misrepresentation or breach of contract by the Supplier, or that there's an unfairness because of either that warrants a remedy.

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

The Supplier's alleged breach of Regulation 14(3) 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 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 and Mrs W'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 and Mrs W 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 and Mrs W, the financial value of their 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 and Mrs W 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.

Would the credit relationship between Shawbrook and Mr and Mrs W have been rendered unfair to him had there been a breach of Regulation 14(3) of the Timeshare Regulations?

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

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 Complaint Letter and subsequent submissions genuinely reflect the consumers' testimony.

To be clear, a Complaint Letter is not evidence – especially when, as here, it contains bare allegations and general rather than consumer-specific allegations.

In the absence of any testimony from Mr and Mrs W, I've no way of knowing what was

important to them when they decided to purchase the membership. And therefore I cannot safely say that the credit relationship in question was unfair because of a breach of Regulation 14(3).

Overall conclusion

In conclusion, given the facts and circumstances of this complaint, I don't think it was unfair for Shawbrook to reject Mr and Mrs W's complaint, as I'm not persuaded that Mr and Mrs W's creditor-debtor relationship with Shawbrook was unfair to them under section 140A. And having taken everything into account, I see no other reason why it would be fair to direct Shawbrook to compensate Mr and Mrs W.

Shawbrook says it accepts my provisional decision.

Mr and Mrs W's PR hasn't responded at all.

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 information 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 W and Mrs W to accept or reject my decision before 2 March 2026.

Christopher Reeves
Ombudsman