

The complaint

Mr and Mrs R 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 March 2016, Mr and Mrs R purchased membership of a timeshare called '1492 Suites@LaPintaBeachClub' (the 'Membership') from Las Vista Marketing SL (the 'Supplier'). The Membership included the use of a specific apartment (Apt 605) for two specific weeks (weeks 21 and 22) every year until 2030. It also entitled Mr and Mrs R to a proportionate share of the net sale proceeds of Apt 605 when it is sold in 2030 – this type of timeshare is sometimes called a 'fractional ownership timeshare'. The Membership cost €44,320, and Mr and Mrs R borrowed £35,900 from Shawbrook to pay for it.

In May 2021, Mr and Mrs R used a professional representative (the 'PR') to complain that they were misled by the Supplier.

In February 2022, Shawbrook rejected the complaint.

Mr and Mrs R then referred their complaint to our service.

One of our investigators rejected the complaint. Specifically, she said the purchase didn't meet the criteria for a claim under section 75 of the CCA because the cash price of the Membership was more than £30,000. And she didn't think she'd seen sufficient evidence to conclude that the creditor-debtor relationship was unfair to Mr and Mrs R under section 140A of the CCA.

Mr and Mrs R asked for a final decision from an ombudsman.

I issued a provisional decision on 9 March 2026, which explained why I intended to uphold this complaint. It included the following provisional findings:

I'm currently minded to uphold Mr and Mrs R's complaint because the Supplier breached Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations') by marketing and/or selling the Membership to Mr and Mrs R as an investment, which, in this case, created an unfair relationship for the purposes of section 140A of the CCA.

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. Instead, it's to decide what's fair and reasonable in the circumstances of this complaint. So while I recognise that there are several complaint points, it isn't necessary for me to make a formal finding on all of them because, even if I uphold the complaint on more than one of them, the redress I'm currently proposing puts Mr and Mrs R in the same or a better position than they'd otherwise be in.

While I appreciate that Mr and Mrs R's PR originally referred to section 75 of the CCA when

it wrote to Shawbrook in May 2021, I've considered this complaint by reference to section 140A of the CCA instead. I've done this for several reasons. First, as our investigator rightly concluded, the purchase doesn't meet the criteria for a claim under section 75 of the CCA because the cash price of the Membership was more than £30,000. Second, the PR explicitly argued that there was an unfair relationship when it wrote to Shawbrook – even if, confusingly, it referred to the 'seller/lender relationship' rather than the creditor-debtor relationship. Third, Shawbrook's final response letter addressed the merits of Mr and Mrs R's complaint, even though the purchase didn't meet the criteria for a claim under section 75, which would indicate that it too construed it as a claim under section 140A. Finally, the complaint letter included complaint points that don't allege a misrepresentation or a breach of contract – so to fully consider this complaint and determine it by reference to what I think is fair and reasonable, I must consider it under section 140A.

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 think it was likely to have been rendered unfair for the purposes of section 140A. In reaching this conclusion, I've considered:

- (1) The information provided by the Supplier at the time of sale, including the contracts and any disclaimers made by the Supplier.*
- (2) All the evidence provided by both parties about what was supposedly said and/or done at the time of sale.*
- (3) The inherent probabilities of what's likely to have happened given the circumstances of the sale.*

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

Shawbrook doesn't dispute and I'm satisfied that the Membership meets the definition of a 'timeshare contract' and is a 'regulated contract' for the purposes of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (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 Membership clearly included an investment component in that Mr and Mrs R'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 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 Membership – they simply regulated how they were marketed and sold.

To conclude, therefore, that the Membership was marketed or sold to Mr and Mrs R 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 Membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

I've seen lots of emails that Mr and Mrs R sent to, and received from, the Supplier between 2016 and 2019. Some concern the Membership. Others seem to be about a further purchase that Mr and Mrs R contemplated in 2017 – it's not clear from the evidence I've seen if this sale completed. The waters are somewhat muddied because it looks like Mr and Mrs R changed their allocated weeks shortly after they purchased the Membership – from weeks 21 and 22 to weeks 9 and 32. I don't think it matters that the emails aren't all necessarily about the Membership: even if they aren't, they tell me something about how the Supplier sold or marketed the timeshare, what Mr and Mrs R were led to believe, and, importantly, what mattered to them.

Based on the emails I've seen, I think it's likely the Supplier sold the Membership to Mr and Mrs R as an investment.

When Mr R emailed the Supplier on 23 March 2016 – 2 weeks after purchasing the Membership – he says he was told he could sell at any time, that he intended to sell much earlier than 2030, and wanted to change week 22 to 'a "maximum value" week to maximise potential resale value'. The Supplier replied to say that, while it doesn't operate a 're-sale facility', it can add his name to a list it maintains of members who want to sell early for Mr R to sell in 2021, that it will take 2 percent of the sale value as commission, and that, 'at present the sales prices have been rising by 5 percent...'. It also tells him how he can 'maximise' value. I don't doubt that similar assurances were given two weeks earlier when Mr and Mrs R purchased the Membership.

Between 21 March 2017 and 21 April 2017, Mr R and the Supplier exchanged emails about a further purchase. Mr R repeatedly asked for a copy of the notes that the Supplier's representative made during a meeting. For example, Mr R emailed the Supplier on 17 April 2017 to say:

'[The Supplier's representative] made handwritten notes confirming that our August week could be sold in 2019 (and verbally stated possibly earlier) at £25,088. I requested that he sign the note for us. He said that he would seek to get his manager to sign.'

A different representative replied on 18 April 2017 to say:

'I can't seem to find any handwritten notes from [name] but I spoke to [name] the Sales Director and he said yes no problem you can sell it in 2019, you can sell it whenever you like really. The value increases every year, especially after the 4 million euros refurbishment being done this year. So your figure of £25,088 sounds realistic.'

In reply, Mr R says:

'On the basis that your email can be taken as formal confirmation that one unit will be sold in 2019 and for which we will receive £25,000 net or very close we will transfer the £4,800 tomorrow.'

Even if Mr and Mrs R didn't ultimately go on to complete the purchase, it's clear to me that

the Supplier marketed the timeshare as an investment, which I think is strongly indicative of how the Membership in question was sold to Mr and Mrs R a year earlier.

Furthermore, the Supplier emailed Mr R on 6 September 2017 to say it had 'rented' his apartment (week 32) and that the 'cost of the rental' would cover his maintenance fees for 2018. In reply, Mr R says he'd hoped that 'the rental would yield a net income' for them as it was 'a peak season week'. He then says:

'Please confirm that our week 32 apartment is on the resale list as we want to recover our purchase prices as soon as possible.'

Shortly afterwards, Mr R emails the Supplier to say:

'...we were advised on purchase and subsequently by the sales staff that there would be the possibility of an early sale in 2018. Please ensure that you have on record our desire to sell week 32 at the earliest opportunity and in the meantime ensure that week 32 is rented out at the highest value possible. I confirm that we will not be using this week and purchased it because we had to purchase 2 weeks to get assistance on our claims against [a different timeshare provider] and we advised at the time we wanted to sell this week as soon as possible as we needed to recover part of what we paid up front.'

There's no evidence that the Supplier replied to dispute or query any of this. (It's clear from other emails that the Supplier was supposed to help Mr and Mrs R with claims against two other timeshare providers.)

Mr and Mrs R have quite recently provided some first-hand testimony too, which largely reflects the contents of the emails I've seen.

All things considered, I think the Supplier sold the Membership to Mr and Mrs R as an investment in breach of Regulation 14(3) of the Timeshare Regulations.

Was the creditor-debtor relationship between Shawbrook and Mr and Mrs R 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 creditor-debtor relationship between Mr and Mrs R and Shawbrook under the credit agreement and the related purchase agreement. 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.

Indeed, it seems to me that, if I'm to conclude that a breach of Regulation 14(3) led to an unfair relationship and warrants relief as a result, I must be persuaded that the Supplier's breach of Regulation 14(3) led Mr and Mrs R to purchase the Membership.

I think it's clear from the emails I've described above that it did. And Mr and Mrs R's

testimony, when read alongside the emails, is plausible and persuasive. They say they only purchased the Membership because they were told they could sell the units early, that they would increase in value, they were guaranteed to recover their up-front payments, and because the Supplier told them they could help them recover the monies they'd paid two other timeshare providers. I think the Supplier's breach of Regulation 14(3) was material to the decision they ultimately made. And I think it's clear they would not have made the purchase in question otherwise.

Conclusion

Given the facts and circumstances of this complaint, I think Shawbrook participated in and perpetuated an unfair credit relationship with Mr and Mrs R 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 is fair and reasonable that I uphold this complaint.

In my provisional decision, I explained what I thought Shawbrook should do to put Mr and Mrs R, to the extent possible, in the position they would have been in had they not purchased the Membership (i.e., not entered into the purchase agreement), and therefore not entered into the credit agreement.

I asked both parties to provide any further comments or evidence for me to consider by 23 March 2026.

Mr and Mrs R accepted my provisional decision. Their PR also provided evidence of the annual management charges they paid as a result of the Membership.

Shawbrook asked to see the emails I mentioned in my provisional decision – and asked for an extension until 7 April 2026. One of our investigators sent it the emails on 24 March 2026, and I gave Shawbrook until 31 March 2026 to make any further submissions. It hasn't sent me any further comments or evidence to consider.

I'm now finalising my decision.

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 Mr and Mrs R accept my provisional decision, and Shawbrook hasn't provided any further information or evidence, I confirm my provisional findings. My reasons remain the same.

Below, I've set out what I think Shawbrook needs to do to put things right. It mirrors what I said in my provisional decision. I appreciate that the PR has now provided evidence of the annual management charges Mr and Mrs R paid. I've left it as a direction to 'refund the annual management charges' for consistency, and to allow Shawbrook to liaise with the Supplier to confirm these amounts.

Putting things right

Having found that Mr and Mrs R would not have agreed to purchase the 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 Shawbrook), and the impact of that breach meaning that, in my view, the relationship between Shawbrook and Mr and Mrs R was unfair under section 140A of the CCA, I think it would be fair and reasonable to put them in the position they would have been in had they not purchased the Membership (i.e., not entered into the

purchase agreement), and therefore not entered into the credit agreement, provided Mr and Mrs R agree to assign to Shawbrook their rights under the contract or hold them on trust for Shawbrook if that can't be achieved.

Here's what I think needs to be done to compensate Mr and Mrs R – whether or not a court would award such compensation:

- (1) Shawbrook should refund Mr and Mrs R'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), Shawbrook should also refund the annual management charges Mr and Mrs R paid as result of the Membership.
- (3) Shawbrook can deduct:
 - i. The value of any promotional giveaways that Mr and Mrs R used or took advantage of; and
 - ii. The market value of the holidays* Mr and Mrs R took using the Membership

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

- (4) Simple interest** at 8% per year should be added to each of the Net Repayments from the date each one was made until the date Shawbrook settles this complaint.
- (5) Shawbrook should remove any adverse information recorded on Mr and Mrs R's credit files in connection with the credit agreement reported within six years of this decision.
- (6) If Mr and Mrs R's Membership is still in place at the time of this decision, as long as they agree to hold the benefit of their interest in the allocated apartment for Shawbrook (or assign it to Shawbrook if that can be achieved), Shawbrook must indemnify them against all ongoing liabilities as a result of the Membership.

*I appreciate 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 isn't practical or possible to determine the market value of the holidays Mr and Mrs R took using the Membership, 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 Shawbrook to take off tax from this interest. If that's the case, Shawbrook must give Mr and Mrs R a certificate showing how much tax it's taken off if they ask for one.

My final decision

I uphold this complaint and direct Shawbrook Bank Limited to calculate and pay Mr and Mrs R fair compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 7 May 2026.

Christopher Reeves
Ombudsman