DRN-6280433

The complaint

Mr and Mrs R's complaint is, in essence, that Shawbrook Bank Limited ('Shawbrook') 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 a claim under Section 75 of the CCA.

What happened

On 17 October 2017 (the 'Time of Sale') Mr and Mrs R bought a membership of a timeshare (the European Collection 'EC') from a timeshare provider (the 'Supplier'). They entered into an agreement with the Supplier to buy 5,000 EC points at a cost of £8,500 (the 'Purchase Agreement').

As EC members, every year they could use their points in exchange for holidays at the Supplier's holiday resorts. Different accommodation had different points values, depending on factors such as location, size, and time of year, and each was subject to availability. So, for example, a larger apartment in peak season would cost more to a member in their points than a smaller apartment outside of school holiday periods.

Mr and Mrs R paid for their EC membership by taking finance of £8,500 from Shawbrook (the 'Credit Agreement').

Mr and Mrs R – using a professional representative (the 'PR') – wrote to Shawbrook on 10 April 2025 (the 'Letter of Complaint') to raise a number of different concerns about their EC membership and the associated Credit Agreement. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

Shawbrook dealt with Mr and Mrs R's concerns as a complaint and issued its final response on 7 May 2025, 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, rejected the complaint on its merits.

The PR, on Mr and Mrs R's behalf, disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R 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, in many ways, no different to that shared in several hundred ombudsman decisions on very similar complaints.

And with that being the case, it is not necessary to set it out here.

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.

And having done so, I agree with the outcome reached by the Investigator, for broadly the same reasons. I do not think this complaint ought to be upheld.

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 is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction.

However, as the Investigator set out, the Limitation Act 1980 (the 'LA') says Mr and Mrs R had six years from the date on which the *'cause of action accrued'* to make their claim, after which Shawbrook has a complete defence.

It is of course for a court to determine whether a respondent can rely on the LA to defend a claim, but I wouldn't normally think it was unfair for a firm to rely on the LA to decline a claim that's been made outside the limitation period.

The date on which the cause of action accrued is, in this case, 17 October 2017 – the Time of Sale. It was then that Mr and Mrs R entered into an agreement based, they allege, on the Supplier's misrepresentation(s). As the loan from Shawbrook was used to finance the purchase, it was also then that they say they suffered a loss. It follows that Mr and Mrs R had six years from the Time of Sale to make a claim for misrepresentation. But they didn't make their claim until 10 April 2025, which is outside the time limits set by the LA.

The PR, in response to the Investigator's view, has referred to Section 32 of the LA, which postpones the limitation period in cases of fraud, concealment, or mistake. It's also referred to a county court judgment.

Essentially, it says Mr and Mrs R's purchase was 'ill-founded in law' and that they couldn't have known their purchase was based on misrepresentations or that 'their arrangement was unlawful' until they took legal advice. The PR says the issues concerning the legality of the timeshare arrangement with the Supplier were concealed from Mr and Mrs R at the Time of Sale. But the PR hasn't provided persuasive evidence of fraud, concealment or mistake, such that Section 32 of the LA would postpone the limitation period in this case. I'd like to reiterate that only a court can decide whether this claim was made out of time. My finding is simply that I don't think it would have been unfair for Shawbrook to rely on the LA to decline the claim in this case.

So, as Mr and Mrs R did not make their misrepresentation claim under Section 75 of the CCA to Shawbrook within six years of the date the cause of action accrued, I do not think Shawbrook needs to do anything further in regard to this claim.

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

I've already explained why I'm not persuaded that a claim under Section 75 of the CCA ought to succeed. But there are aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

I have considered the entirety of the credit relationship between Mr and Mrs R and Shawbrook along with all of the circumstances of the complaint. When carrying out my analysis and coming to my conclusion, I have looked at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of 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 R and Shawbrook. And having done so, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A.

The Supplier's sales & marketing practices at the Time of Sale

Mr R's complaint about Shawbrook being party to an unfair credit relationship was and is made for several reasons.

The PR says, for instance that:

1. The EC was misrepresented to Mr and Mrs R at the Time of Sale;
2. They were not given sufficient information at the Time of Sale to allow them to make an informed decision; and
3. No credit or affordability checks were carried out before the lending was offered.

However, I am not persuaded that any of these are reasons why this complaint should succeed.

It has been said that the EC was sold to Mr and Mrs R by the Supplier as providing excellent quality and availability, such that they would be able to go on the holidays they wanted, at any time they wanted. But there has been no evidence submitted by Mr and Mrs R as to what they were actually told by the Supplier here, so I cannot say whether it was likely to have been untrue. And although it seems that Mr and Mrs R have never used their membership to book holidays, I can also see that they have never paid their annual management charge since making their purchase, so I can't see that they would have been able to make a booking anyway. And as there is nothing else on file which makes me think the Supplier made misrepresentations at the Time of Sale, I am not persuaded that Mr and Mrs R's credit relationship with Shawbrook was rendered unfair in this regard.

In its referral to this Service, the PR has cited Section 225 of the Digital Markets, Competition and Consumers Act 2024, in relation to omissions from the Supplier at the Time of Sale. But the legislation cited by the PR here was not in force at the Time of Sale, so I think this point is misconceived.

However, I have considered the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUTR'), Regulation 12 of the Timeshare Regulations 2010[1] and Section 2.2.3 of the Resort Development Organisation's Code of Conduct 2010 (the 'RDO'). So misleading omissions, or a commercial practice that significantly impaired a consumer's freedom of choice and caused them to buy something they otherwise wouldn't have done, could amount to an aggressive commercial practice. That is, in my view, something that could lead to an unfair debtor-creditor relationship.

The PR says that Mr and Mrs R were not given sufficient information at the Time of Sale by the Supplier in order to make an informed choice. It specifically states that Mr and Mrs R were not told that the maintenance fees would rise by as much as they have.

But I think it likely that the Supplier would have told Mr and Mrs R about the requirement to pay annual maintenance fees, and this requirement is also set out in the contractual documentation given to Mr and Mrs R when they agreed to make the purchase.

But the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

So, while I acknowledge that it is possible that the Supplier did not give Mr and Mrs R sufficient information, in good time, in order to satisfy the requirements of the CPUTR, RDO and/or Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'), even if that was the case, neither Mr and Mrs R nor the PR have persuaded me that they were deprived of information that would have led them to make a different purchasing decision at the Time of Sale. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why they led to a financial loss.

As regards the allegation that no credit or affordability checks were completed, I haven't seen anything to persuade me that the right checks weren't carried out by Shawbrook given this complaint's circumstances. 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 and Mrs R was actually unaffordable, before also concluding that they lost out as a result, and then consider whether the credit relationship with Shawbrook was unfair to them for this reason. But from the information provided, I agree with the Investigator here - I am not satisfied that the lending was unaffordable for Mr and Mrs R.

Overall, therefore, I don't think that Mr and Mrs R's credit relationship with Shawbrook was rendered unfair to them under Section 140A for any of the reasons above.

Conclusion

In conclusion, for all of the reasons above, I do not think Shawbrook acted unfairly or unreasonably when it did not accept the relevant Section 75 claim; I am not persuaded that Shawbrook was party to a credit relationship with Mr and Mrs R under the Credit Agreement

[1] The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010

that was unfair to them for the purposes of Section 140A of the CCA; and I don't see any other reason why it would be fair or reasonable to direct Shawbrook to compensate Mr and Mrs R.

My final decision

I do not uphold this complaint.

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 13 May 2026.

Chris Riggs
Ombudsman