DRN-5171984

The complaint

Mrs and Mr O'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 a claim under Section 75 of the CCA.

What happened

Mrs and Mr O owned a number of timeshare products commencing with a type of 'trial' membership in early 2018. Later that same year they bought a product called the 'Fractional Club' membership. This was a type of product which meant it provided future holidaying rights at the Supplier's group of resorts, based on a points system. Fractional Club membership was also asset backed, which meant it gave Mrs and Mr O more than just holidaying rights. It included a share in the net sale proceeds of an Allocated Property named on the Purchase Agreement after the membership term ended. Neither of these two purchases are the subject of this complaint.

The product at the centre of *this* complaint is Mrs and Mr O's membership of a timeshare which I will refer to as the Signature Collection membership. This was purchased on 9 April 2019 and was considered an upgraded membership. Whilst the Signature Collection membership had similarities to the Fractional Club which was based on a points system and was also asset backed, the accommodation and service offerings of the Signature Club were marketed as being of a higher standard. Certain other privileges were also offered, for example the members had guaranteed access to the allocated suite.

Mrs and Mr O took out a loan for the cost of the Signature Collection membership which was £14,175. This was payable over 180 months at £163 per month meaning the total amount to be paid for credit over the term was £29,484 (the APR[1] was 11.9%).

Mrs and Mr O – using a professional representative (the 'PR') – wrote to the Lender on 9 September 2022 (the 'Letter of Complaint') to raise a number of different concerns. The Lender rejected the complaint on every ground. The Lender also said the Letter of Complaint was heavily templated and used in a large number of very similar timeshare complaints and allegations. The Lender also said that it had seen no commentary or statement from Mrs and Mr O themselves which either corroborated or helped explain what it said were the PR's generic points of complaint.

I issued a provisional decision (PD) about this case on 4 December 2025 in which I comprehensively set out my reasoning for not upholding the complaint. However, I invited the parties to respond with any further information or evidence they wanted to submit.

I've now had a response from Mrs and Mr O's PR which basically disagrees with my PD. I have read everything said on their behalf with great care. But as I said before, my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to

[1] APR, or Annual Percentage Rate, is the yearly cost of a loan or credit, expressed as a percentage. It includes the interest rate plus any other mandatory fees, giving a more complete picture of the total cost of borrowing than the interest rate alone.

decide what is fair and reasonable in the circumstances of this complaint. Essentially, there's no new information or evidence submitted in response to my PD, but rather, the response consists of a re-submission and re-positioning of certain arguments I'd already seen (and fully considered in detail before issuing my PD).

I'm also satisfied that, where appropriate, I have applied the law and the various rules correctly. I previously told both parties in my first PD about the overall legal and regulatory context that I think is relevant to this complaint. This is no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website.

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 published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

<u>The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance</u>

Below are the most relevant provisions and/or guidance as they were at the relevant time:

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

<u>The FCA's Principles</u>

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

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 this, I am not upholding this complaint.

This is my final decision.

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. This affords consumers ("debtors") a right of recourse against lenders which provided 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. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

It was said in the Letter of Complaint that Signature Collection membership had been misrepresented by the Supplier at the Time of Sale because Mrs and Mr O were:

1. Told that they had purchased an investment that would appreciate in value when that was not true.
2. Told that they would own a share in a property that would increase in value during the membership term when that was not true.
3. Told they could sell the timeshare back to the resort or easily sell it at a profit when that wasn't true.
4. Made to believe that they would have access to a specific apartment all around the year.

However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. Even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than an honestly held opinion as there isn't enough evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably have held.

As for points 3 and 4, while it's possible that Signature Collection membership was misrepresented at the Time of Sale for these reasons, I don't think it's probable. The allegations, as put by the PR, are given none of the colour or context necessary to demonstrating that the Supplier made false statements of existing fact. So, since there are no other specific examples or supporting evidence on file to back up the suggestion that the membership was misrepresented in these ways, I don't think it was.

With all this in mind, whilst I recognise that Mrs and Mr O and the PR have concerns about the way in which Signature Collection membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. So, this means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

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

I've already explained why I'm not persuaded that Signature Collection membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other 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.

Having considered the entirety of the credit relationship between Mrs and Mr O and the Lender along with all of the circumstances of the complaint, I don't 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 standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;
3. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements;
4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
5. The inherent probabilities of the sale given its circumstances; and when relevant, any existing unfairness from a related credit agreement.

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

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

Mrs and Mr O's complaint about the Lender being party to an unfair credit relationship was made for several reasons.

The PR says, for instance, that the right checks weren't carried out before the Lender lent to Mrs and Mr O. I haven't seen anything to persuade me this was the case in this complaint given its circumstances. But even if I were to find that the Lender 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 Mrs and Mr O was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair for this reason. Mrs and Mr O have not expanded on why or how the lending was unaffordable and from the information provided, I am not satisfied that the lending was unaffordable for them.

Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mrs and Mr O knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Signature Collection membership. As that lending doesn't look like it was unaffordable, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so, I can't see why that led to them suffering a financial loss – such that I can say that the credit relationship in question was unfair as a result.

It was also said in the PR's Letter of Complaint that Mrs and Mr O were made *"to believe that they would have access to the holiday's* [sic] *apartment at all times around the year"*. But it's not entirely clear whether these allegations, as put by their PR, are claiming that they thought they would be able to stay at an Allocated Property whenever they wanted, or they thought the availability of general accommodation using the holiday points more broadly, was guaranteed. I think in any event it's reasonable for me to say that like any holiday accommodation, availability was not unlimited given the higher demand at peak times, like school holidays, for instance.

Mrs and Mr O imply pressure was applied during the sale and of course, I acknowledge that they may have felt weary after sales processes that went on for a long time, for example. However, whilst I'm very sorry to disappoint them, I do find these allegations unpersuasive. I've noted they both signed a 'right of withdrawal' form which advised them of their right to cancel the transaction within a 14-day period. Mrs and Mr O still haven't given any explanation as to why they didn't do this.

Overall, therefore, I don't think that Mrs and Mr O's credit relationship with the Lender was rendered unfair under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR says the credit relationship with the Lender was unfair. And that's the suggestion that Signature Collection membership was marketed and sold as an investment in breach of the prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Mrs and Mr O's Signature Collection 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 Signature Collection 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."

The PR says that the Supplier did exactly this at the Time of Sale – saying, in summary, that Mrs and Mr O were told by the Supplier that Signature Collection membership was the type of investment that would only increase in value. Allegations of this nature are contained within the PR's Letter of Complaint.

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

A share in the Allocated Property clearly constituted an investment because it offered Mrs and Mr O the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that Signature Collection 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 doesn't 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 Signature Collection. They just regulated how such products were marketed and sold.

To conclude, therefore, that this membership was marketed or sold to Mrs and Mr O 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 as an investment, i.e. told them or led them to believe that Signature Collection membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

I am familiar with the documentation and processes used by the Supplier during these types of sale. There is competing evidence in this complaint as to whether Signature Collection membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Signature Collection as an 'investment' or quantifying to prospective purchasers, such as Mrs and Mr O, the financial value of the share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Signature Collection membership as an investment. So, I accept that it's equally possible that Signature Collection membership was marketed and sold to Mrs and Mr O as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. With that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Was the credit relationship between the Lender and the Consumer rendered unfair?

Having said that it was possible 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 could have had on the fairness of the credit relationship between Mrs and Mr O 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 me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mrs and Mr O and the Lender that was unfair and warranted relief as a result, then 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.

I've thought very carefully about what motivated Mrs and Mr O to purchase the Signature Collection membership, considering all of the available evidence. Having done so, I do not think the prospect of a financial gain from this membership was an important and motivating factor when they decided to go ahead with this purchase.

In so far as any allegation of investment related marketing carried out by the Supplier during the sale is concerned, the PR says, *"they were told they had purchased an investment which would appreciate in value."* However, there was no further or descriptive detail underpinning these allegations within the Letter of Complaint.

I think at this juncture it's also reasonable to point out that Mrs and Mr O made a client personal statement which was their opportunity to explain all about the sale and what took place. But this statement was not submitted together with the original complaint when it was raised by their PR in September 2022. In fact, it is dated as 7 November 2023 (although unsigned), so quite considerably *after* the initial PR's letter. But I still can't be sure of the actual date of the statement because it seems to me to be no more than a printed "A4" document – in my view a somewhat primitive type of statement, especially considering that these consumers are professionally represented. And evidence I've seen from the Lender

tends to show the client statement hadn't even yet been sent to it (or ourselves) by September 2024.

But whether the client personal statement 'surfaced' in late 2023, or at some point in 2024, this still means that it was made at least four-and-a-half years after the April 2019 sale and so the risk of recollection inaccuracy is something I need to consider with care. In my view, this much delayed and later submission means there is a considerable danger of parts of their complaint testimony being unreliable and inaccurate due to the passage of time. For example, that there are several material differences between the accounts provided in the original Letter of Complaint - and Mrs and Mr O's much later and unsigned statement – help demonstrate the caution I should exercise here.

More so, I am concerned that the risk of inaccuracy is further increased by the *timing* of their statement: we can be sure it was written *after* the influential court judgment on Shawbrook & BPF v FOS[2]. This case put several important legal and factual findings into the public domain that have since had a significant influence on how complaints about timeshares—especially fractional type ownership models—are assessed. This case brought significant public attention to issues specifically surrounding the alleged marketing and sale of timeshares as investments, which Regulation 14(3) prohibited.

I am aware that the PR's response to my PD disagrees with me on this and says that high value and / or stressful events are often more memorable. However, as I said in my PD, even if I were to look more favourably at what Mrs and Mr O say in their statement, it still has to be said that this is a very short explanation indeed, comprising of just four sentences. I disagree with the PR's assessment of this being a statement which shows these consumers bought the membership based on it being pitched to them as an investment. In my view, what the statement features is mainly a description of their numerous timeshare purchases, both before and after the 2019 Signature Collection sale. And it's not at all clear that any breach by the Supplier of Regulation 14(3) – if there was one - had any material impact on their decision to go ahead with the 2019 purchase. They don't describe buying with any expectation of it being an investment which would yield a gain or profit, and I find that surprising since I would have expected to see a full description from them about this, if it had been the case.

The Lender sent me extracts of contemporaneous sales notes it said were recorded at the time of the sale by the Supplier's sales agent. These notes refer to Mr X's impending retirement and describe increasing their holiday entitlement points. To me, this is consistent with a desire to purchase their various timeshare products (including the 2019 one) for holiday enjoyment. And this is consistent too, with their purchasing history, which included buying a trial membership and Fractional membership, before making the Signature Collection purchase in April 2019. So, I think it's much more likely that they were encouraged and motivated by the upgraded holidaying offer provided by the new Signature Collection membership, rather than any search for a long-term investment profit, realisable in their case in 2034.

Weighing all this up, and in the specific circumstances of this particular case, I do not think the prospect of a financial gain from this membership was an important and motivating factor when Mrs and Mr O decided to go ahead with their purchase. Of course, this doesn't mean they weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But I'm afraid Mrs and Mr O don't persuade me that their purchase was motivated by their share in the

[2] *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)

Allocated Property and the possibility of a profit. So, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision Mrs and Mr O ultimately made.

All this leads me to think that Mrs and Mr O would have still pressed ahead with this purchase, whether or not it had been presented to them as an investment opportunity in breach of Regulation 14(3) of the Timeshare Regulations. I therefore don't think the credit relationship between Mrs and Mr O and Shawbrook Bank Limited was unfair.

The provision of information by the Supplier at the Time of Sale

Mrs and Mr O say they were not given sufficient information at the Time of Sale by the Supplier about some of the ongoing costs of Signature Collection membership. The PR also says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

As I've already indicated, 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.

I acknowledge that it is also possible that the Supplier did not give Mrs and Mr O sufficient information, in good time, on the various charges they could have been subject to as Signature Collection members in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mrs and Mr O in practice, nor that any such terms led them to behave in a certain way to their detriment. So, with that being the case, I'm not persuaded that any of the terms governing Signature Collection membership are likely to have led to an unfairness that warrants a remedy.

Wider responses to my PD

In its response to my PD, the PR has reasserted its view that the Supplier marketed the membership to Mrs and Mr O as an investment and that this was a motivating factor in their decision.

In my PD I explained the reasons why I didn't think any breach of Regulation 14(3) had led Mrs and Mr O to proceed with their purchase. In short, I was not persuaded that their decision was motivated by the prospect of a financial gain (i.e., a profit). In reaching that view, I took into account the testimony given by Mrs and Mr O in the course of their complaint. I recognise the PR has interpreted Mrs and Mr O's testimony differently to how I have, and I have carefully considered its further comments. Ultimately though, they have not led me to a different conclusion.

The PR also objects to the approach I've taken in assessing the main aspect of the complaint, which is essentially that investment-related marketing made Mrs and Mr O buy this membership. The PR says that I have detracted from the judgment in *Shawbrook & BPF*

v FOS[3] and the case law that contributed to it, by requiring these consumers to have been motivated by the investment element in order to uphold the complaint. But I did not make such a finding. I basically said that, in my view, they were motivated by the holidaying and accommodation options offered by the Supplier – and this was a factor in my overall conclusion which is fully explained above.

However, in light of all the available evidence I said that they would, on balance, have pressed ahead with the purchase of the membership even if there had been a breach of Regulation 14(3). So, for the reasons I have already set out, I still do not think that any breach of Regulation 14(3), if indeed there was one, was material to their decision to purchase this membership.

Commission

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33* ('*Hopcraft, Johnson and Wrench*').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was *"so high"* and *"a powerful indication that the relationship…was unfair"* (see paragraph 327);
2. The failure to disclose the commission; and
3. The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. The size of the commission as a proportion of the charge for credit;
2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);
3. The characteristics of the consumer;
4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and

[3] 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').

5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, it sets out principles which apply to credit brokers other than car dealer–credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mrs and Mr O in arguing that their credit relationship with the Lender was or were unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mrs and Mr O, nor have I seen anything that persuades me that the commission arrangements between them gave the Supplier a choice over the interest rates that led Mrs and Mr O into credit agreements that cost disproportionately more than they otherwise could have.

I acknowledge that it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Times of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But as I've said before, 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. And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Times of Sale, it is for the reasons set out below that I don't think any such failures were themselves a reason to find one or more of the credit relationships in question unfair to Mrs and Mr O.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreements that Mrs and Mr O entered into wasn't high. At £708.75, the payment was only 5% of the amount borrowed and even less than that (4.63%) as a proportion of the charges for credit. So, had they known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at those levels, I'm not persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payments at that time. After all, Mrs and Mr O wanted this membership and had no obvious means of their own to pay for it. And at such a level, the impact of commission on the cost of the credit they needed for a timeshare they wanted doesn't strike me as disproportionate. So, I think they would still have taken out the loans to fund their purchases at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of successful timeshare sales. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreements. As it wasn't acting as an agent of Mrs and Mr O but as the supplier of contractual rights they obtained under the Purchase Agreements, the transactions don't strike me as ones with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreements and thus a fiduciary duty.

Overall, therefore, I'm not persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationships unfair to Mrs and Mr O.

Section 140A: Conclusion

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Mrs and Mr O and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. I therefore don't think it would be fair or reasonable that I uphold this complaint on that basis.

Commission: The Alternative Grounds of Complaint

While I've found that Mrs and Mr O's credit relationship with the Lender wasn't unfair for reasons relating to the commission arrangements, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Mrs and Mr O's complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mrs and Mr O (i.e., secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mrs and Mr O a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think they would still have taken out the loan to fund the purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.
In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mrs and Mr O's Section 75 claim(s).

Overall Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mrs and Mr O's Section 75 claim(s).

I also am not persuaded that the Lender was party to a credit relationship under the Credit Agreement and related Purchase Agreement that was unfair 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 or reasonable to direct the Lender to compensate them.

My final decision

I do not uphold this complaint against Shawbrook Bank Limited.

I do not direct Shawbrook Bank Limited to do anything else.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O and Mr O to accept or reject my decision before 16 January 2026.

Michael Campbell
Ombudsman