DRN-5215333

The complaint

Mrs H'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 her and her former partner, 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

The product at the centre of this complaint is Mrs H's membership of a timeshare which I will refer to as the 'Fractional Club' membership. This was purchased on 17 May 2016 by Mrs H and her partner. They borrowed a total of £26,767 from the Lender which included a trade-in reduction from a type of 'Trial' timeshare membership they already held at that time. Their new loan was payable over 180 months at £309 per month, meaning the total amount to be paid for credit over the term was £55,674.

I'm very sorry to hear that Mrs H's partner has since passed away.

The Fractional Club membership was a type of product which meant it provided future holidaying rights at the Supplier's group of resorts, based on a points system. Mrs H and her late partner bought 1,600 points on this occasion. However, the Fractional Club membership was also asset backed, which meant it gave Mrs H and her late partner more than just holidaying rights. It included a share in the net sale proceeds of an Allocated Property named on the Purchase Agreement after this membership term ended, which in this case was in 2032.

Mrs H – using a professional representative (the 'PR') to bring her complaint – wrote to the Lender on 16 May 2022 (the 'Letter of Complaint') to raise a number of different concerns.

The Lender rejected the complaint on every ground. It began by saying that the Letter of Complaint from the PR was in a heavily templated format which contained generic and identical allegations which it had seen from the same PR in many other timeshare complaints. It also said despite evidently being unhappy about many aspects of the May 2016 sale, Mrs H and her partner still went on to buy several more timeshare products from the same provider, in the months after this purchase. The Lender explained how this appeared inconsistent with the complaint now being raised.

Mrs H didn't accept the Lender's rejection of her complaint and so it was referred to the Financial Ombudsman Service. It was assessed by one of our investigators who, having considered the information on file, also rejected the complaint on its merits. Mrs H disagreed with the investigator's assessment and has asked for an ombudsman's decision – which is why it was passed to me.

I issued a provisional decision (PD) about this case on 6 November 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. Further to this, I issued a second communication (a 'side letter') to the parties on 2 December 2025 about commission. In this I said I wasn't 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 relationship unfair to Mrs H. In fact, there was no commission related to this case.

I've had a response from Mrs H's PR which basically disagrees with my PD. I have read everything said on her 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 decide what is fair and reasonable in the circumstances of this complaint. No new information or evidence was submitted in response to my PD, but rather, it consisted of a re-submission of 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 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. But in addition, I would add that the following regulatory rules / guidance are also relevant and have been considered:

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

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]

The FCA's Principles

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 Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mrs H and her partner 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. Given assurances at the time of the sale that they would have access to certain holidays when that was not true.

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 a 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 Fractional Club 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.

As I'll also be explaining about later, in 2024 Mrs H added a 'client personal statement' to her complaint, and she herself doesn't repeat these misrepresentations at all. The contemporary documentation I've seen from the sale also doesn't support that such misrepresentations would have been made. So, since there's 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.

So, while I recognise that Mrs H and the PR have concerns about the way in which Fractional Club 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 Fractional Club 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 H 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. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
4. The inherent probabilities of the sale given its circumstances; and when relevant, any existing unfairness from a related credit agreement.
5. 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 H and the Lender.

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

Mrs H'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 H and her partner. 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 here 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. However, from the information provided, I am not satisfied that the lending was unaffordable in this case.

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 H and her late partner 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 Fractional Club membership. As the lending doesn't look like it was unaffordable for them, 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.

Mrs H also implies that she and her late partner were subjected to pressure at the point-of-sale meeting and that the sales techniques made them 'succumb' to the purchase. I've considered this carefully and I understand the point being made. However, overall, Mrs H says relatively little about what was actually said or done by the Supplier during the sales presentation which made them apparently feel as if they had *no choice* but to purchase the membership, when they simply didn't want to. I think it's also relevant to say that they were given a 14-day cooling off period and I note, for instance, that she and her partner both signed a declaration which was headed 'Right of Withdrawal' and which said, *"The consumer has the right to withdraw from this contract within 14 calendar days without giving any reason."* Mrs H hasn't provided a credible explanation – given she and her partner both signed this declaration - for why they did not cancel their membership during that time.

As I'll also explain below, Mrs H and her partner did go on to make a further timeshare purchase under what appears to me to be very similar circumstances to those alleged for the May 2016 sale. In my view, this later timeshare purchase doesn't support the allegations made now, about the Fractional Club membership in May 2016 being bought only because of undue pressure. I consider it highly unlikely that Mrs H and her partner would return to make another purchase if they felt they had been 'strongarmed' into buying something they didn't want just a few months before. So, with all these issues in mind, I find the pressure allegations in this particular case to be unpersuasive.

It was also said in the PR's Letter of Complaint that Mrs H and her late partner were made *"to believe that they would have access to the holiday's* [sic] *apartment at any time all around the year"*. But I've noted that Mrs H makes no comments at all about this in her own client personal statement, which was later added to her complaint. So, it's not clear to me where this allegation about problems with booking accommodation comes from. It's also not entirely clear whether the PR is saying they thought they would be able to stay at the Allocated Property whenever they wanted, or they thought the availability of general accommodation using their holiday points more broadly, was guaranteed.

However, I think 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. Some of the sales paperwork they were given stated that the availability of holidays was subject to demand. And with regard to the usage of the Allocated Property, the Purchase Agreement they signed stated that their membership did not *" transfer or grant the right of use to any allocated property".* I also find it unlikely that the Supplier would have made promises of the type suggested in the Letter of Complaint, and whilst I accept it's obviously possible that Mrs H may not have been able to take certain holidays at certain times, I have not seen enough to persuade me that this rendered the credit relationship with the Lender unfair.

Overall, therefore, I don't think that Mrs H and her late partner'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 Fractional Club 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 H's Fractional Club 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 Fractional Club 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."

But the PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mrs H and her partner were told by the Supplier that Fractional Club 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 as it offered Mrs H and her partner 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 Fractional Club 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 Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that this Fractional membership was marketed or sold 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 Fractional Club membership offered them 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 Fractional Club 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.

I am familiar with the sales process and documentation likely used by the Supplier at the time of this May 2016 sale. On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an ‘investment’ or quantifying to prospective purchasers, 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 Fractional Club membership as an investment. So, I accept that it’s also possible that Fractional Club membership was marketed and sold to Mrs H and her late partner 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 H 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 H 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.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mrs H and her late partner decided to go ahead with their purchase.

In so far as any evidence of their being investment related marketing carried out by the Supplier during the sale is concerned, the PR says, *"my client was told that they had purchased an investment and that* [their] *timeshare would considerably appreciate in value".* The PR also says Mrs H and her partner were told, they would get a *"considerable return on* [the] *investment".*

However, there was also no further or descriptive detail underpinning these allegations within the Letter of Complaint setting out exactly what was said and by whom. Importantly, I think I should also draw attention to Mrs H's own client personal statement as I think there are some meaningful differences between that statement and the PR's Letter of Complaint.

I say this because there are, for instance, several specific allegations raised by the PR which are not reflected at all in what Mrs H has to say in her own statement. Examples of these differences include an allegation by the PR that she and her late partner were told certain things about 'selling on' the Fractional product (presumably in a type of second-hand marketplace) and also the apparently unlimited access to the apartment *"any time all around the year"* which I've dealt with above. The point I'm making here is that I think these differences are meaningful to an extent that they cause me to exercise caution when considering the suite of allegations as a whole, including what is clearly the PR's central allegation about the Fractional Club membership being marketed to them as an investment; and one which would appreciate in value.

But Mrs H's own statement commentary only says that *"my then partner …. was convinced that the purchase of a fractional property … would not only give us safe holidays for years to come but would also be an asset that could be passed on to my daughter".* In my view, this doesn't really contain a specific assertion that their purchase was motivated by an investment hope or the expectation of a profit. To be fair, nor does it explain in straightforward or practical terms how Mrs H's late partner came to the view he did, or what he really meant by these words. But this also falls substantially short of the specific allegations made by the PR about Mrs H and her late partner being sold the Fractional Club on the promise of 'considerable future increases in value'.

In my view, the above description from Mrs H does not support the allegations made by her PR about their May 2016 purchase being made with an investment motivation in mind. The evidence I've seen shows Mrs H and her partner knew they were buying a share of an Allocated Property, and they knew what that share was, and what it still would be in percentage terms, at the end of the contract. It's also fair for me to point out that the remaining entirety of Mrs H's client personal statement focusses on other areas completely unconnected with 'investment', such as the alleged sales techniques (which I've addressed above) and the accommodation levels at the different holiday resorts (which she has since found to be somewhat underwhelming).

I think it's also fair to look at the entirety of Mrs H and her late partner's timeshare purchasing journey and experience from early 2016 and beyond. This is because this evidence does convince me that their purchasing motivations lay firmly with achieving suitable and enjoyable future holidays, and in this context, I do think they would have always pressed ahead with the purchase in question. I say this because, as of May 2016, they were

already existing Trial members with the same Supplier. And the Lender says the contemporaneous sale discussion notes, at the time of their Trial membership purchase, show that they were buying specifically with a view to upgrading at some future point and becoming 'full' members – which is what they in due course did. These notes said they *"like*[d] *their holidays and want to do a few more things. Really feel that product will help them to achieve what they want to do…"*.

In addition to this, we also now know that Mrs H and her partner went on not only to buy Fractional Club membership in May 2016, but they also later bought a 'Signature Collection' membership, in November 2016, thus continuing the theme of sequentially upgrading to a more comprehensive type of timeshare product, offering enhanced holiday experiences, as time went by.

I accept this Signature Collection purchase was after the May 2016 Fractional Club sale, but in my view, it nevertheless validates the wider circumstances in their case and supports the idea that Mrs H and her late partner were likely interested in making timeshare purchases focussed on the future enjoyment which these types of holidays could bring. The Signature Collection was considered an upgraded product in many different ways. Its features included, but were not limited to, a higher standard of accommodation and the exclusive use of the Allocated Property. And when buying this later Signature product, the contemporaneous discussion notes of the sale also speak of similar purchasing motivations to those I've mentioned above. In these notes, Mrs H expressed her hopes and expectations with the following words: *"benefits from the newly acquired Signature are plentiful – the location including the Sun at the apartment for the majority of the day".* She goes on, in the same notes, to refer positively about her experience of this November 2016 sale and I see that she signed these notes.

With all this in mind, I think the evidence we have here is that it's much more likely that Mrs H and her late partner's purchasing rationale, as of the May 2016 sale, was based on their hopes and expectations of future holidays, particularly as they progressed through the different levels and grades of timeshare products in the way I've described. In my view, the events before, during, and after that sale each - and collectively - support this view.

Weighing all this up, and in the specific circumstances of this particular case, I do not think the prospect of a financial gain, or a search for long-term investment profit realisable in 2032, were important and motivating factors when Mrs H and her late partner 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 H doesn't persuade me that this purchase was motivated by their share in the Allocated Property and the possibility of a profit. So, I don't think a breach of Regulation 14(3) by the Supplier, even if there was one, was likely to have been material to the decision Mrs H and her partner ultimately made. Everything I've explained above leads me to think the evidence shows it's much more likely that they would have still gone ahead with this May 2016 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 am very sorry to disappoint Mrs H, and I do genuinely understand and sympathise how her memories of this time period may be difficult for her. But I am not persuaded that their decision to purchase Fractional Club membership was motivated here by the prospect of a financial gain (i.e., a profit). I don't think the evidence supports this. I think the evidence is more persuasive in this case that they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3).

On this basis, I therefore don't think the credit relationship between Mrs H and Shawbrook Bank Limited was unfair.

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

Mrs H says they were not given sufficient information at the Time of Sale by the Supplier about some of the ongoing costs of Fractional Club 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 H sufficient information, in good time, on the various charges they could have been subject to as Fractional Club 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 H and her late partner 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 Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

Responses to my PD

I received a response to my PD but nothing regarding the later commission-related side letter.

The PR objects to the approach I've taken in assessing this aspect of the complaint, believing that I have detracted from the judgment in *Shawbrook & BPF v FOS*[1] and the case law that contributed to it, by requiring Mrs H to have been *"primarily or mainly 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, Mrs H was motivated by the holiday options offered by the Supplier – and this was a factor in my overall conclusion. In light of all the available evidence I said that she 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 Mrs H's decision to purchase the Fractional Club 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*').

[1] 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').

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 credit charge). 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
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 H in arguing that a credit relationship with the Lender was unfair to her for reasons relating to commission given the facts and circumstances of this complaint.

In stark contrast to the facts of Mr Johnson's case, as I understand it, no payment between the Lender and the Supplier, such as a commission, was payable when the Credit Agreement was arranged at the Time of Sale in Mrs H's situation. With that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not persuaded that the commercial arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mrs H.

Overall, therefore, I'm not persuaded that a commission arrangement between the Supplier and the Lender rendered the credit relationship unfair.

Conclusion

For the reasons I have comprehensively explained, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim.

Also, I am not persuaded that the Lender was party to a credit relationship with Mrs H under the Credit Agreement that was unfair for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate her.

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 H to accept or reject my decision before 14 January 2026.

Michael Campbell
Ombudsman