DRN-5652167

The complaint

Mrs and Mr M'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

The product at the centre of this complaint is their membership of a timeshare which I will refer to as the Signature Collection membership. The Signature Collection 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. However, the membership was also asset backed, which meant it gave Mrs and Mr M 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 2038.

This was purchased on 31 March 2019. The cost of this membership was £12,843. However, there was some additional money to pay back on an outstanding loan which related to a previous Fractional Club timeshare membership which Mrs and Mr M already owned at the time and had traded in. The Fractional Club contained many similarities to the Signature Collection. But the latter was considered an upgraded product with higher-end accommodation and more holiday rights, such as guaranteed access to the Allocated Property.

Mrs and Mr M borrowed a total of £41,272 from the Lender in March 2019. This was payable over 180 months at £476.91 per month, meaning the total amount to be paid for credit over the term was £85,843 (the APR[1] was 11.9%).

So, to be clear, the complaint I'm addressing here refers *only* to the timeshare purchase of *31 March 2019* and I have only directly addressed this sale in my findings[2]. I have nevertheless made some occasional references to the earlier purchases[3] as I think these do have some relevance to what happened overall.

[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.
[2] Mrs and Mr M have received a separate decision about their January 2019 purchase. This was the subject of a separate complaint.
[3] A Trail and then a Fractional Club membership.

Mrs and Mr M – using a professional representative (the 'PR') – wrote to the Lender on 22 March 2023 (the 'Letter of Complaint') to raise a number of different concerns. The Lender rejected the complaint on every ground. The complaint was then 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 and Mr M disagreed with the investigator's assessment and asked for an ombudsman's decision – which is why it was passed to me.

I issued a provisional decision (PD) about this case on 20 November 2025 in which I comprehensively set out my reasoning for not upholding the complaint. The PD should be read in conjunction with this final decision. However, the PD 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 21 January 2026 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.

I've had a response from Mrs and Mr M's PR which basically disagrees with my PD. I have read everything said on their behalf with great care. 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. I have already set out in the PD the legal and regulatory context in which I'm making my decision about this case. For further information, I have also considered the following:

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

Under the CCA, certain conditions must be met if the protection afforded to consumers is engaged, including the condition that the cash price of the purchase must exceed £100 but

not exceed £30,000. So, if the purchase price of the product is in excess of £30,000, irrespective of the value of any trade-in, a claim under Section 75 cannot succeed.

As I've seen from all the various purchasing documents in this case which we've been sent, Mrs and Mr M's Signature Collection membership of March 2019 had a cash price of £12,843 and they consolidated this with an outstanding loan they already held regarding an earlier Fractional Club membership which had only been taken out a couple of months earlier. This loan consolidation meant they borrowed at total of £41,272 in March 2019 - a cash price greater than the upper limit covered by Section 75, as I've described above.

So, given they entered into a credit agreement for £41,272 I am therefore satisfied that Mrs and Mr M's claim under Section 75 for misrepresentation cannot succeed for this reason.

I have taken into consideration that Section 75A of the CCA makes further provision for a creditor to be liable for breaches of contract by the Supplier in the event that certain conditions are met. In certain circumstances, for example, this can allow me to consider cases where the goods or service are/is over £30,000 and does not exceed £60,260. However, I note that in this case, the PR's Letter of Complaint refers only to misrepresentations and not breaches of contract.

I therefore agree with our investigator who previously issued a written 'view' to all the parties in this complaint saying he didn't think this aspect of the CCA applied, due to the amount involved being over £30,000. Also, Mrs and Mr M's PR, whilst I accept it disagrees with other aspects of the investigators' 'view', did not challenge or respond to this particular matter, as regards the £30,000 limit.

For these reasons, I find that the Lender acted fairly in not accepting Mrs and Mr M's claim under Section 75A of the CCA. And in any event, the matters they raise essentially do still receive my consideration of their claim under S.140 of the CCA.

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

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 M 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 and Mr M and the Lender.

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

Mrs and Mr M'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 in Marche 2019 before the Lender lent to Mrs and Mr M. 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 M 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. But 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 M 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 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 and Mr M say that they were subjected to pressure at the point-of-sale meeting and that the sales techniques made them feel pressed into the purchase. I've considered this carefully and I understand the point being made. However, overall, they say 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 they 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."* They haven't provided a credible explanation for why they did not cancel their membership during that time.

As I've also mentioned, Mrs and Mr M had bought a very similar timeshare product a couple of months earlier. They describe this earlier purchase under what appears to me to be identical circumstances to those alleged for the March 2019 sale, with pressure allegedly forcing them to buy. But in my view, this earlier timeshare purchase doesn't support the allegations being made about the membership bought in March 2019. I consider it unlikely, for example, that Mrs and Mr M would have endured a first sale under the type of pressure they say was present, but then return just two months later to make another purchase under what were identical circumstances. So, I'm afraid 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 and Mr M were made *"to believe that they would have access to the holiday's* [sic] *apartment at all times around the year"*. But Mrs and Mr M make no comments at all about this in their own client personal statement, which was later added to their complaint. So, it's not clear to me where this allegation about problems with booking / accommodation issues comes from. It's also not entirely clear whether the PR is saying they thought they would be able to stay at an Allocated Property whenever they wanted, or they thought the availability of general accommodation using their holiday points more broadly, was guaranteed.

I've seen no evidence they endured booking problems with this Signature Collection membership. However, 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. 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 and Mr M may not have been able to take a certain holiday at a certain time, 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 and Mr M's credit relationship with the Lender was rendered unfair to them 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 to them. And that's the suggestion that Signature Collection membership was marketed and sold to them 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 M'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 M 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 both within the PR's Letter of Complaint, and also the client personal statement evidently written by Mrs and Mr M – their opportunity to provide their own personalised version of what happened.

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 and Mr M 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 membership was marketed or sold to Mrs and Mr M 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 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 M, 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 membership as an investment. So, I accept that it's equally possible that membership was marketed and sold to Mrs and Mr M 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 M 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 M 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 M 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. I will explain why.

I think it's first relevant to point out that Mrs and Mr M's PR Letter of Complaint was brought in March 2023. They later added a statement describing their recollections of these events, but this was made in October 2024, some five-and-a-half years after the sale. Their statement is also very short indeed, so the risk of recollection inaccuracy is something I need to consider. I also think there are substantial differences between the PR's suite of allegations and their own account, with certain specific and important allegations made in the former yet not mentioned at all in the latter.

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 also no further or descriptive detail underpinning these allegations within the Letter of Complaint. Importantly, I don't think these allegations are reflected or reinforced by Mrs and Mr M's own memories of the sale as set out in their statement. The majority of their complaint points in their short statement refer to

the allegations of bullying and pressure - which I've comprehensively dealt with above. As regards any mention of investing, Mrs and Mr M only say,

> *"We were told that we would be free to sell at any time or* [the Supplier] *would sell for us, for obviously much more than we paid. When it came to the upgrade, we were told that the bigger the property we buy into, the more money would be made from the investment".*

In my view, these are limited and relatively unclear references to investing which form only a small part of a very brief statement. These comments also fall quite far below the more explicit allegations made by the PR in the Letter of Complaint, and importantly, they don't indicate to me that Mrs and Mr M were specifically motivated into making their March 2019 purchase for the purpose of obtaining a gain or profit. In fact, it seems to me that the first part of their statement (above) relates not to the March 2019 purchase, which is the subject of this complaint, but to their earlier timeshare product which they then upgraded from in March 2019 and where they increased their holiday entitlement points from 1,820 to 4,500.

For the March 2019 purchase, what Mrs and Mr M have to say only represents what they were allegedly told at the Time of Sale, it doesn't give any insight into what their principal motivations were for making the purchase. And if Mrs and Mr M really did place an investment for profit or gain highly on their priorities for deciding to buy, then I think they would have clearly said so and explained all about how this was pitched to them. In the event, they only very briefly mention eventually getting 'more' money (in 2038) than they'd paid (in 2019) without any further explanation. As I've also said, I must exercise caution on reading their statement, it being made so long after the sale event.

Mrs and Mr M had first purchased a Trial membership. But this was limited to just five weeks of holiday over three years. And it seems much more likely to me that, given all the circumstances of their purchasing history, they were evidently keen and motivated by the type of holidays provided by the Supplier when they upgraded, in January 2019,from the Trial to a Fractional Club membership. They then increased their holidaying points again in March 2019 and they bought a peak season entitlement in a higher standard of product, which I think speaks to their desire to increase their holidaying rights and enjoyment.

On this basis therefore, I think it's fair and reasonable to conclude that their predominant purchasing motivation is demonstrated by their progression through the timeshare offers available from the Supplier i.e. their ongoing desire for good-standard and upgraded holidays in the months and years ahead.

With all this in mind, I do not think the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mrs and Mr M decided to go ahead with their purchase in March 2019. I don't think the evidence supports this - I think the evidence is much more persuasive that they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3).

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. As I've explained above, the fact that Signature Collection membership did include an investment *element,* did not necessarily breach the prohibition found in Regulation 14(3). But I'm afraid Mrs and Mr M don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit.

I therefore 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 and Mr M ultimately made. On this

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

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

Mrs and Mr M 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 M 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 M 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.

Responses to my PD

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

The PR has once again argued that Mrs and Mr M were moved to buy this timeshare by the Supplier's claims about it being an investment. However, I've already dealt with this matter in the main body of my decision, above.

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. The PR now objects to the approach I've taken, believing that I have detracted from the judgment in *Shawbrook & BPF v FOS*[4] and the case law that contributed to it, by requiring Mrs and Mr M 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 and Mr M were 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 they would, on balance, have still gone 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 and Mr M's decision to purchase this membership. The evidence is persuasive that they would have made the purchase, nonetheless.

[4] *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 PR has also highlighted under Section 140B (9) of the CCA, the burden of proof falls on the Lender to disprove the allegation that its relationship with Mrs and Mr M was unfair. I agree that this is correct, placing a burden on lenders during the process of litigation. That does not mean, though, that the Lender – or I – should take a claim at face value. There remains an onus on Mrs and Mr M to provide some evidence for the claim they are making, despite the overall burden of proof resting with the Lender, as was set out in the judgment in *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34 at paragraph 40. I also remind both parties that it is my role to make findings on what I consider to be fair and reasonable in all the circumstances of any given complaint.

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
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 M in arguing that their credit relationship with the Lender was 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 M, nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led Mrs and Mr M into a credit agreement that cost disproportionately more than it 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 Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But as I've said above, the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. 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 Time of Sale, it is for the reasons set out below that I don't think any such failure is itself a reason to find the credit relationship in question unfair to Mrs and Mr M.

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 Agreement that Mrs and Mr M entered into wasn't high. At £2,063 it was 5% of the amount borrowed and even less than that as a proportion of the charge 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 that level, I'm not persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mrs and Mr M wanted this membership and had no obvious means of their own to pay for it. And at such a relatively low 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 loan to fund their purchase 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 a successful timeshare sale. 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 Agreement. And as it wasn't acting as an agent of Mrs and Mr M but as the supplier of contractual rights they obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreement and thus a fiduciary duty.

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

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 M in practice, nor that any such terms led them to behave in a certain way to their detriment. And 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.

Commission: The Alternative Grounds of Complaint

While I've found that Mrs and Mr M 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 M 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 M (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 M 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.

Conclusion

I am very sorry to have to disappoint Mrs and Mr M. But as I have comprehensively explained, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim.

I am also not persuaded that the Lender was party to a credit relationship with Mrs and Mr M 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 them.

My final decision

I do not uphold this complaint against Shawbrook Bank Limited.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 11 March 2026.

Michael Campbell
Ombudsman