

## **The complaint**

Mr and Mrs A'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**

Mr and Mrs A purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 16 March 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,200 fractional points at a cost of £20,098 (the 'Purchase Agreement'). After trading in a previous timeshare, Mr and Mrs A paid for their Fractional Club membership by taking finance of £17,349 from the Lender (the 'Credit Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs A more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr and Mrs A – using a professional representative (the 'PR') – wrote to the Lender on 17 January 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender initially dealt with Mr and Mrs A's concerns as a claim under Section 75 of the CCA and subsequently investigated their complaint. However, the Lender was unable to provide a final response to the complaint within eight weeks.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mr and Mrs A disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I considered the matter and issued a provisional decision (the 'PD') dated 1 August 2025. In that decision, I said:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having done that, I do not currently think this complaint should be upheld.*

*However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.*

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

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

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

*Further, creditors can reasonably reject Section 75 claims they are first informed about after the claim has become time-barred under the Limitation Act 1980 (the 'LA') as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court. Therefore, it's relevant to consider whether Mr and Mrs A's Section 75 claim was time-barred under the LA before they put it to the Lender.*

*A claim under Section 75 is a 'like' claim against the creditor. It in effect mirrors the claim the consumer could make against the Supplier.*

*A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued (see Section 2 of the LA).*

*But a claim like this one, under Section 75, is also an "action to recover any sum by virtue of any enactment" under Section 9 of the LA. The limitation period under that provision is also six years from the date on which the cause of action accrued.*

*The date on which the cause of action accrued was the Time of Sale - which was 16 March 2015. I say this because Mr and Mrs A entered into the purchase of their timeshare at that time based on the alleged misrepresentations of the Supplier – which they say they relied on. And as the loan from the Lender was used to help finance the purchase, it was when they entered into the Credit Agreement that they suffered a loss.*

*Mr and Mrs A first notified the Lender of their Section 75 claim on 17 January 2022. As more than six years had passed between Time of Sale and when Mr and Mrs A first put their claim to the Lender, I don't think it was unfair or unreasonable of Lender to reject Mr and Mrs A's concerns about the Supplier's alleged misrepresentations.*

*And that 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?**

*There are aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.*

*Having considered the entirety of the credit relationship between Mr and Mrs A 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; and*
- 4. The inherent probabilities of the sale given its circumstances.*

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

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

*Mr and Mrs A'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 Mr and Mrs A. I haven't seen anything to persuade me that 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 Mr and Mrs A 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 to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr and Mrs A.*

*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 Mr and Mrs A 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. So, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to a financial loss to Mr and Mrs A – such that I can say that the credit relationship in question was unfair to them as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate them, even if the loan wasn't arranged properly.*

*The PR also says that there was one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Mr and Mrs A in practice, nor that any such terms led them to behave in a certain way to their detriment, 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.*

*I acknowledge that Mr and Mrs A may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs A made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.*

*Overall, therefore, I don't think that Mr and Mrs A'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 Fractional Club 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 Mr and Mrs A'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 Mr and Mrs A were told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.*

*The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional 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 Mr and Mrs A 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 Fractional Club membership was marketed or sold to Mr and Mrs A 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 to them 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.*

*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, such as Mr and Mrs A, the financial value of their 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 equally possible that Fractional Club membership was marketed and sold to Mr and Mrs A 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. And 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 Mr and Mrs A rendered unfair?***

*Having found 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 had on the fairness of the credit relationship between Mr and Mrs A 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 Mr and Mrs A and the Lender that was unfair to them and warranted relief as a result, 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 considered the witness testimony provided by Mr and Mrs A. The initial complaint to the Lender did not specifically provide any personal testimony from Mr and Mrs A. However, we heard from Mr A following the Investigator's assessment when he said:*

*"We [were] led to believe that buying into the Fractional Property Scheme was giving us a share in a property when it was sold after 19 years*

*In the meantime we would benefit from extra points for holidays by not using the property*

*We endured a full day of presentations by numerous sales representatives advising us of the benefits to this scheme*

*At the end of the day we were so confused and tired we agreed to sign. A strange thing to say but we just wanted out. To get away, our heads [were] all over the place."*

*Mr A does not say that the investment element of Fractional Club membership was a key driver in the purchasing decision. Rather, it seems that Mr and Mrs A agreed to purchase the*

*membership to end, what was by all accounts, a lengthy sales process.*

*With that being the case, I am not persuaded that the prospect of a financial gain was an important and motivating factor when Mr and Mrs A decided to go ahead with their purchase. That doesn't mean Mr and Mrs A 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, as Mr and Mrs A themselves don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision Mr and Mrs A ultimately made.*

*On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs A's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr and Mrs A and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).*

In conclusion, given the facts and circumstances of this complaint, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs A's Section 75 claim, and I was not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

The Lender responded to the PD and accepted it.

The PR also responded – they did not accept the PD and provided some further comments and evidence they wish to be considered.

Having received the relevant responses from both parties, I'm now finalising my decision.

### **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:

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.

Following the responses from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the PD only relate to the issue of whether the credit relationship between Mr and Mrs A and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr and Mrs A as an investment at the Time of Sale. They've also now argued for the first time that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But they didn't make any further comments in relation to those in their response to my PD. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on the PR's points raised in response.

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

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

As I explained in my PD, I wasn't persuaded that the evidence suggested that Mr and Mrs A purchased Fractional Club membership because of any breach of Regulation 14(3).

The PR explained in their response to my PD that Mr and Mrs A had stated the benefits that convinced them to purchase in their testimony – and that included the potential gains from selling the apartment. This meant the investment element played an important part during the sales process and was a motivating factor in Mr and Mrs A's decision making.

Mr and Mrs A's statement sets out that they were led to believe that Fractional Club membership would give them "*a share in a property when it was sold after 19 years*". But it makes no reference to any specific detail as to what that share would entail and doesn't suggest that Mr and Mrs A had an expectation of a financial gain from the sale of the property.

In addition, Mr and Mrs A's statement does not, on my reading of it, indicate that the investment element of Fractional Club membership was a motivating factor in their purchase. Mr and Mrs A's reference to a share in a property appears to be a factual description of how Fractional Club membership worked rather than an explanation as to what had persuaded them to purchase. Simply saying that they recall being told something does not mean that this persuaded Mr and Mrs A (by itself or in combination with other factors) to purchase. And when Mr and Mrs A's statement goes on to say that they agreed to become Fractional Club members it does not say they did so because of the investment prospects of the arrangement.

The PR also says that as the Supplier's pricing sheet set out the "unit share" Mr and Mrs A acquired under their Fractional Club membership, this shows the investment element played "quite an important role" in convincing them to purchase it. However, the pricing sheet was a proforma document that captured a number of details about the purchase in a standardised format. And the Supplier would have recorded that information irrespective of the customer's motivations for purchasing. So, I don't consider this document offers any insight into Mr and Mrs A's motivation for making their purchase.

Therefore, I remain unpersuaded that the share of the property and the prospect of a financial gain was a motivating factor in their purchase.

So, ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr and Mrs A's purchasing decision.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my provisional decision, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr and Mrs A's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mr and Mrs A and the Lender was unfair to them for this reason.

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

The PR says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

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 Mr and Mrs A 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 Mr and Mrs A, 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 Mr and Mrs A 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 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 Time of Sale, it is for the reason set out below that I don't think any such failure is itself a reason to find the credit relationship in question unfair to Mr and Mrs A.

In stark contrast to the facts of Mr Johnson's case, as I understand it, no payment between the Lender and Supplier, such as a commission, was payable when the Credit Agreement was arranged at the Time of Sale. And 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 Mr and Mrs A.

### **S140A 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 Mr and Mrs A and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

### **Conclusion**

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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 Mr and Mrs A's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them 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**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 5 March 2026.

Claire Poyntz  
**Ombudsman**