

The complaint

Mrs J's complaint is, in essence, that Shawbrook Bank Limited acted unfairly and unreasonably by (1) being party to an unfair credit relationship with her 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.

Background to the complaint

Mrs J and her husband, Mr J, were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Signature Collection' – which they bought on 6 June 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,660 points at a cost of £25,645 (the 'Purchase Agreement').

Signature Collection membership was asset backed – which meant it gave Mr and Mrs J 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 J held a Signature Collection membership with the Supplier at the Time of Sale. They held 2,300 points for use on a bi-annual basis. They traded these in toward their new membership, under which they purchased 1,660 points to use annually. They took out a loan with Shawbrook to finance the remainder and repay the loan they had taken to fund the previous membership, borrowing £31,087 in Mrs J's sole name (the 'Credit Agreement').

As only Mrs J was named on the Credit Agreement, only she is able to refer a complaint about Shawbrook to our Service. For ease I will refer to Mrs J only from here on, even where she and Mr J may have been acting jointly, or the matter is otherwise applicable to them both.

Mrs J – using a professional representative (the 'PR') – wrote to Shawbrook on 15 September 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.

Shawbrook dealt with Mrs J's concerns as a complaint and issued its final response letter on 6 September 2023, declining to investigate it on the basis that it had been raised outside of the statutory time limits (which it had not been).

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, recommended that the complaint be upheld. In short, the Investigator thought that the Supplier had marketed and sold Signature Collection membership as an investment to Mrs J at the Time of Sale in breach of Regulation 14(3) of the Timeshare Regulations. And given the impact of that breach on her purchasing decision, the Investigator concluded that the credit relationship between Shawbrook and Mrs J was rendered unfair to her for the purposes of section 140A of the CCA.

Shawbrook 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 as my initial conclusions differed from those of our Investigator, I issued a provisional decision (the 'PD'). In that decision, I said:

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. Shawbrook doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

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

1. Told that she had purchased an investment that would "considerably appreciate in value".
2. Promised a considerable return on her investment because she was told that she would own a share in a property that would considerably increase in value.
3. Told that she could sell her Signature Collection membership to the Supplier or easily to third parties at a profit.
4. Made to believe that she would have access to "the holiday apartment" at any time all year round.

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. And 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 any accompanying 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 held.

As for points 3 and 4, while it's *possible* that Signature Collection membership was misrepresented at the Time of Sale for one or both of those reasons, I don't think it's *probable*. They're given little to none of the colour or context necessary to demonstrating that the Supplier made false statements of existing fact and/or opinion. And as there isn't any other evidence on file to support the suggestion that Signature Collection membership was misrepresented for these reasons, I don't think it was.

So, while I recognise that Mrs J - and the PR - have concerns about the way in which

Signature Collection membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that Shawbrook acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

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

I've already explained why I'm not persuaded that Signature Collection membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mrs J and Shawbrook 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
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 J and Shawbrook.

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

Mrs J's complaint about Shawbrook 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 Shawbrook lent to Mrs J. 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 Shawbrook failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mrs J was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship with Shawbrook was unfair to her for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mrs J.

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 Shawbrook

wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mrs J knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Signature Collection membership. And as the lending doesn't look like it was unaffordable for her, 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 Mrs J suffering a financial loss – such that I can say that the credit relationship in question was unfair on her as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell Shawbrook to compensate her, 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 Mrs J in practice, nor that any such terms led her to behave in a certain way to her detriment, 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.

Overall, therefore, I don't think that Mrs J's credit relationship with Shawbrook was rendered unfair to her 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 Shawbrook was unfair to her. And that's the suggestion that Signature Collection membership was marketed and sold to her as an investment in breach of prohibition against selling timeshares in that way.

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

Shawbrook does not dispute, and I am satisfied, that Mrs J'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."

But the PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mrs J was told by the Supplier that Signature Collection 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 Mrs J the prospect of a financial return – whether or not, like all investments, that was more than what she 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 Signature Collection membership was marketed or sold to Mrs J 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 her as an investment, i.e. told her or led her to believe that Signature Collection membership offered her 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 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 J, 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 Signature Collection membership as an investment. So, I accept that it's equally possible that Signature Collection membership was marketed and sold to Mrs J 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 Shawbrook and Mrs J 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 Mrs J and Shawbrook 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 J and Shawbrook that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

To help me decide this point, I've carefully considered what Mrs J has said in the course of her complaint about how the membership was sold to her and her motivation for purchasing it.

I would note first of all that the evidence in this respect is quite limited. Within the Letter of Complaint, it is said that Mrs J was told that she had purchased an

investment and could expect a profit. There was no further detail underpinning these statements within the Letter of Complaint, which are rather generic in nature. In fact, such assertions are made in an identical fashion by the PR in a number of other complaints.

Following our Investigator's view, the PR provided a statement from Mrs J made in February 2024 providing her recollections from the Time of Sale. The statement is fairly brief, reflecting the understandable difficulty Mrs J will have had in remembering events that took place some seven years prior, as she herself acknowledged.

Further, Mrs J purchased six memberships from the Supplier between 2014 and 2018 – which could, in my view, make it difficult for Mrs J to recount with much accuracy what happened in one sale compared to another. And her statement seems to reflect this difficulty, as she talks in somewhat vague terms about the sale of the various memberships she purchased as one, rather than setting out her recollections about the specific sale at issue within this complaint.

Within her statement, and of relevance to the point I am considering here, Mrs J said:

“The overriding reason for us to invest initially and then upgrade our investment on future visits was the clear prospects told to us of the gains we would make by investing when it came to the sale of our investment due to the increased value of our share and the better returns and profit rewards.

...

I was encouraged to take out more finance to increase our investment saying that the more we invested the bigger the returns would be.”

While taken at face value these comments suggest that the Supplier's marketing of the membership as an investment was material to Mrs J's decision to purchase it, I have some difficulty in placing much weight upon them. In talking in such vague terms and about, seemingly, all six of her purchases from the Supplier – it is hard for me to be confident of Mrs J's specific motivations for the 2018 purchase at issue here.

I note Mrs J also recalls the Supplier trying to get her to upgrade – and invest – again on what she describes as her last visit, when she was pushed the prospect of better returns to help fund Mr J's ongoing care costs. But this cannot have been in June 2018, given that Mrs J took holidays after the sale at issue here. So these comments do not speak to Mrs J's motivations at the Time of Sale.

I'm also mindful that Mrs J only provided these comments in 2024. As well as coming some significant time after the Time of Sale, they were only provided following our Investigator's view that a similar complaint should not be upheld and the judgment in *Shawbrook & BPF v FOS*. So I cannot discount the possibility that Mrs J's comments were influenced by one, or both, of these.

I'm aware that the more time that passes between a complaint and the event complained about, the more risk there is of recollections being vague, inaccurate and influenced by discussions with others.

In this case, especially in the absence of an earlier account nearer to the Time of Sale or the time the complaint was first made, I simply can't place significant weight on these recollections. I find it difficult to explain why Mrs J didn't, at the outset, just say

that she had been told she would make more money than she put in and this is why she purchased Signature Collection membership if this is what happened. In the circumstances, and on balance, I think there's a high risk that Mrs J was influenced by discussions with others or the widespread publicity following the outcome of the judicial review. Put simply, I can't put enough weight on Mrs J's account that would enable me to uphold this complaint.

I have also borne in mind that Mrs J purchased a significantly larger number of points which increased the holiday options available to her and her husband, trading in her existing 2,330 bi-annual points toward the 1,660 annual points taken under the new memberships – upgrading from one week every other year to one week each year. So I think a motivating factor in Mrs J's decision to take out the membership in question was the greater "purchasing power" that the additional points offered her.

Weighing up all of the evidence before me, I am not persuaded that the prospect of a financial gain from Signature Collection membership was an important and motivating factor when Mrs J decided to go ahead with her purchase. That doesn't mean she wasn'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 Mrs J herself does not persuade me that the purchase was motivated by her 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 she ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mrs J's decision to purchase Signature Collection 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 she would have pressed ahead with the 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 Mrs J and Shawbrook was unfair to her even if the Supplier had breached Regulation 14(3).

In conclusion, given the facts and circumstances of this complaint, I did not think that Shawbrook acted unfairly or unreasonably when it dealt with Mrs J's Section 75 claim, and I was not persuaded that Shawbrook was party to a credit relationship with her under the Credit Agreement that was unfair to her 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 Shawbrook to compensate her.

Shawbrook 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 in the main relate to the issue of whether the credit relationship between Mrs J and Shawbrook was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mrs J as an investment at the Time of Sale. They’ve also now argued for the first time that the payment of a commission by Shawbrook 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 Shawbrook participate in an unfair credit relationship?

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

The PR explained in their response to my PD that they hadn't shared the Investigator's view on this complaint with Mrs J, saying "*this was done in order not to influence their recollections*" (albeit I considered the relevant view to have been that issued on another of Mrs J's complaints, I understand from what the PR says that this wasn't shared either).

The PR said this means Mrs J's recollections were not influenced by either the Investigator's view or the judgement handed down in *Shawbrook and BPF v FOS*¹.

Part of my assessment of the testimony was to consider *when* it was written, and whether it may have been affected by external factors such as the widespread publication of the outcome of *Shawbrook and BPF v FOS*.

I have thought about what the PR has said, but on balance I maintain that there is a risk that Mrs J's testimony was coloured by the Investigator's view (on a separate but related and very similar complaint) and/or the outcome in *Shawbrook & BPF v FOS*. And, on balance, the way in which the evidence has been provided makes me conclude that I can place little weight on it. As outlined in my PD, it was not only the timing of the statement that gave me cause to question the reliability of the comments it contained.

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* and the case law that contributed to it, by requiring Mrs J 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 said that, in my view, Mrs J was highly motivated by the increased holiday options offered by the upgrade she was undertaking – trading in her existing 2,330 bi-annual points toward the 1,660 annual points taken under the new memberships and upgrading from one week every other year to one week each year – which was a factor in my overall conclusion in light of all the available evidence that she would, on balance, have pressed ahead with her purchase of the Signature Collection membership even if there had been a breach of Regulation 14(3).

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 Mrs J'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 Signature Collection. 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

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*').

persuaded Mrs J'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 Mrs J and Shawbrook was unfair to her for this reason.

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

The PR says that a payment of commission from Shawbrook 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 Mrs J in arguing that her credit relationship with Shawbrook was unfair to her for reasons relating to commission given the facts and circumstances of this complaint.

I haven't seen anything to suggest that Shawbrook and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mrs J, 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 J into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that Shawbrook 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 Shawbrook 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 J.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by Shawbrook to the Supplier for arranging the Credit Agreement that Mrs J entered into wasn't high. At £1,149.40, it was only 9.94% of the amount borrowed and even less than that (8.85%) as a proportion of the charge for credit. So, had she 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 currently persuaded that she either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mrs J wanted Signature Collection membership and had no obvious means of her own to pay for it. And at such a low level, the impact of commission on the cost of the credit she needed for a timeshare she wanted doesn't strike me as disproportionate. So, I think Mrs J would still have taken out the loan to fund her 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 J but as the supplier of contractual rights she 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 her when arranging the Credit Agreement and thus a fiduciary duty.

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

I will also address the PR's point regarding the apparent ambiguity in the proposed sale date of the Allocated Property. The PR suggests that a delayed sale date could lead to an unfairness to Mrs J in the future, as any delay could mean a delay in the realisation of her share in the Allocated Property.

It does appear that the proposed date for the commencement of the sales process, as set out on the owners' certificate, is 31 December 2034. This same date is set out under point 1 of the Members Declaration, which has been initialled and signed as being read by Mrs J. This date indicates that the membership has a term of 16 years. The ambiguity identified by

the PR is that in the Information Statement provided as part of the purchase documentation it says the following:

*“The Owning Company will retain such Allocated Property until the automatic sale date in **19 years time** or such later date as is specified in the Rules or the Fractional Rights Certificate.”* (bold my emphasis).

It seems clear to me that the commencement date for the start of the sales process is 31 December 2034. This actual date is repeated in the sales documentation as I’ve set out above.

So, I can’t see that this is a reason to find the credit relationship unfair and uphold this complaint.

Section 140A: conclusion

Given all of the factors I’ve looked at in this part of my decision, and having taken all of them into account, I’m not persuaded that the credit relationship between Mrs J and Shawbrook under the Credit Agreement and related Purchase Agreement was unfair to her. So, I don’t think it is fair or reasonable that I uphold this complaint on that basis.

Commission: The Alternative Grounds of Complaint

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

The first ground relates to whether Shawbrook is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from Shawbrook without telling Mrs J (i.e., secretly). And the second relates to Shawbrook’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 J 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 to her. And while it’s possible that Shawbrook 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 Shawbrook’s part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think she would still have taken out the loan to fund her purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that Shawbrook acted unfairly or unreasonably when it dealt with Mrs J’s Section 75 claim, and I am not persuaded that Shawbrook was party to a credit relationship with her under the Credit Agreement that was unfair to her 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 Shawbrook to compensate her.

My final decision

For the reasons I've explained, I don't uphold this complaint.

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

Ben Jennings
Ombudsman