DRN-5823019

The complaint

Mr and Mrs T'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.

Background to the complaint

Mr and Mrs T purchased membership of a timeshare (the 'Signature Collection') from a timeshare provider (the 'Supplier') on 29 October 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,420 fractional points at a cost of £23,292 (the 'Purchase Agreement'). But after trading in their existing timeshare, they ended up paying £9,546 for membership of the Signature Collection.

Signature Collection membership was asset backed – which meant it gave Mr and Mrs T more than just holiday rights. It also included a share in the net sale proceeds of a property named on their Purchase Agreement (the 'Allocated Property') after their membership term ends. Mr and Mrs T could use their fractional points to stay in the Allocated Property in a designated week of the year, on a bi-annual basis.

Mr and Mrs T paid for their Signature Collection membership by taking finance of £23,292 from the Lender (the 'Credit Agreement').

Mr and Mrs T – using a professional representative (the 'PR') – wrote to the Lender on 8 November 2021 (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 dealt with Mr and Mrs T's concerns as a complaint, rejecting it on every ground as set out in its responses of 30 November 2021 and 2 August 2022.

Mr and Mrs T then referred the complaint to the Financial Ombudsman Service and it was assessed by one of our Investigators. The Investigator thought that the Supplier had marketed and sold Signature Collection membership as an investment to Mr and Mrs T at the Time of Sale in breach of Regulation 14(3) of the Timeshare Regulations. And given the impact of that breach on their purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mr and Mrs T was rendered unfair to them for the purposes of section 140A of the CCA.

The Lender disagreed with the Investigator's assessment and asked for an Ombudsman's decision, so 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') to both parties. In that decision, I said:

> I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

And having done that, I do not currently think this complaint should be upheld.

But 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

As both sides may already know, a claim against the Lender under Section 75 essentially mirrors the claim Mr and Mrs T could make against the Supplier. Certain conditions must be met if this protection is engaged – which are set out in the CCA. The Lender does not dispute that the relevant conditions are met in this complaint and I'm satisfied that they are.

However, there are certain time limits that apply – and that I think mean Mr and Mrs T's claim would've been time-barred.

The Limitation Act 1980 sets out limitation periods, or time limits, for bringing various types of legal claim. For a claim based on contract, it's not generally possible to start court action more than six years after the cause of action arose. If a claim is brought too late, the respondent is likely to have a complete defence to the claim on that basis.

For claims relating to misrepresentation, the time limit would typically be six years from the date the claimant suffers damage as a result of the misrepresentation. For example, entering into a contract – and incurring liabilities – when they would otherwise not have done.

Mr and Mrs T's claim under Section 75 is that but for the Supplier's various alleged misrepresentations, they wouldn't have entered into the Purchase Agreement (and, therefore, the Credit Agreement). So it is the date on which they entered into those agreements that their cause of action arose, meaning they had six years from that date within which to bring this claim.

Mr and Mrs T entered into the Purchase Agreement and Credit Agreement on 29 October 2015. They raised their claim under Section 75 within the Letter of Complaint dated 8 November 2021 – outside of the six-year period. That being the case, I don't think the Lender acted unfairly or unreasonably in declining the claim. However, I have considered whether these alleged misrepresentations could have been something that caused an unfair credit relationship later in this decision.

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

I have already explained why I am not persuaded that the contract entered into by Mr and Mrs T was misrepresented by the Supplier in a way that makes for a successful claim under Section 75 of the CCA and outcome in this complaint. But Mr and Mrs T also say that the credit relationship between them and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time of Sale that they have concerns about. It is those concerns that I explore here.

I have considered the entirety of the credit relationship between Mr and Mrs T and the Lender along with all of the circumstances of the complaint and I do not 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 Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale;
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 T and the Lender.

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

Mr and Mrs T's complaint about the Lender being party to an unfair credit relationship was also made for several reasons, all of which I set out at the start of this decision.

These include the various alleged misrepresentations made by the Supplier. While I don't consider those give rise to an actionable claim under Section 75, I've considered these in my assessment of the fairness of the credit relationship between Mr and Mrs T and the Lender.

They include the suggestion that the Signature Collection membership had been misrepresented by the Supplier as an investment, through which Mr and Mrs T would have a share of a property and obtain a "*considerable return*". As I'll come on to in more detail below, I consider that Mr and Mrs T's acquisition of a share in the Allocated Property did amount to an investment – as it offered them the prospect of a financial return. Presenting the timeshare as an investment would not, therefore, have amounted to a misrepresentation – albeit there are other considerations when it comes to the marketing and selling of a timeshare contract as an investment that I explore below.

The amount of money Mr and Mrs T receive on their investment will only be known after the membership term ends, when the Allocated Property is sold. So even if I were to accept that any such comments were made by the Supplier in this regard, I cannot say they would amount to a misrepresentation.

It is also said in the Letter of Complaint that Mr and Mrs T were told that they could sell the timeshare back to the resort and that they would have access to the Allocated Property at any time throughout the year – neither of which were true.

On balance, I'm not persuaded by these allegations. These comments form part of what is a templated letter prepared by the PR on Mr and Mrs T's behalf, and are generic in nature. Moreover there is then little mention of either alleged misrepresentation within the testimony that was subsequently provided by Mr and Mrs T directly.

In that testimony, Mr and Mrs T do not say they were told they could sell the timeshare back to the Supplier. And I find it unlikely they were, when this was not something that the Supplier offered – and this was clearly set out in the documentation that Mr and

Mrs T were given at the Time of Sale. I do not find it likely that the Supplier would've suggested something so starkly contradictory to not only its standard practice, but to the terms and conditions that were provided to Mr and Mrs T at the time.

And rather than saying that they did not have access to the Allocated Property when they wanted, within their testimony Mr and Mrs T note having stayed at the Allocated Property on one occasion – with no reference to any difficulty in doing so at any other time. Again the contractual paperwork set out the terms applicable to their use of the Allocated Property and find it most likely that the Supplier informed them of their rights in line with this.

There is a further allegation that the Supplier misled Mr and Mrs T and carried on unfair commercial practices which were prohibited under the CPUT Regulations. But given the limited evidence in this complaint, I am not persuaded that anything done or not done by the Supplier was prohibited under the CPUT Regulations.

The PR says that the right checks may not have been carried out before the Lender lent to Mr and Mrs T, as Mr and Mrs T do not recall an affordability assessment being carried out. 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 T 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. Again, from the information provided, I am not satisfied that the lending was unaffordable for the Mr and Mrs T. If there is any further information on this (or any other points raised in this provisional decision) that Mr and Mrs T wish to provide, I would invite them to do so in response to this provisional decision.

While not raised in the Letter of Complaint, within the statement provided to us during our investigation Mr and Mrs T have said that they were pressured by the Supplier into purchasing Signature Collection membership at the Time of Sale. I acknowledge that they 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 Signature Collection 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. Moreover, they went on to upgrade their Signature Collection membership. I find that difficult to understand if the reason they went ahead with the purchase in question was because they were pressured into it. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs T made the decision to purchase Signature Collection membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

I'm not persuaded, therefore, that Mr and Mrs T'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 they say their 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 prohibition against selling timeshares in that way.

<u>Was Signature Collection membership marketed and sold at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations?</u>

The Lender does not dispute, and I am satisfied, that Mr and Mrs T'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 membership of the Signature Collection 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 PR says that the Supplier did exactly that at the Time of Sale. So, that is what I have considered next.

The term "investment" is not defined in the Timeshare Regulations. In *Shawbrook & BPF v FOS*, the parties agreed that, 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*" at [56]. I will use the same definition.

Mr and Mrs T's share in the Allocated Property clearly, in my view, constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it.

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 Mr and Mrs T 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 Signature Collection 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 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 Mr and Mrs T, 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. There were, for instance, disclaimers in the contemporaneous paperwork that state that Signature Collection membership was not sold to Mr and Mrs T as an investment. So, it's *possible* that Signature Collection membership wasn't marketed or sold to them as an investment in breach of Regulation 14(3).

On the other hand, I acknowledge that the Supplier's training material left open the

possibility that the sales representative may have positioned Signature Collection membership as an investment. On this point, I note the PR has sent us a copy of the Supplier's training manual that they assert must have been used, and which they consider evidences that the membership was sold as an investment. That training manual, however, relates to Fractional Club membership – a different product to the Signature Collection purchased by Mr and Mrs T and at issue in this complaint. But I have reviewed a copy of the sales presentation materials in use by the Supplier around the Time of Sale, which – without absolutely certainty – demonstrate what Mr and Mrs T were *likely* to have been told and shown by the Supplier about the product before agreeing to take it out. And having done so, I accept that it's equally possible that Signature Collection membership was marketed and sold to Mr and Mrs T 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 is 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 T rendered unfair to them?

As the Supreme Court's judgment in *Plevin* makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

And in light of what the courts had to say in *Carney* and *Kerrigan,* 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 T and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) lead them 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 Mr and Mrs T have said in the course of their complaint about how the membership was sold to them and their motivation for taking it out.

I would note first of all that the evidence in this respect is limited. Within the Letter of Complaint, it is said that Mr and Mrs T were told that:

> *"[they] had purchased an investment and [their] timeshare would considerably appreciate in value",*
>
> *"[they] would have a share of a property and its value would considerably increase, therefore [they were] promised a considerable return on investment", and*
>
> *"[they] could easily sell [the timeshare] at a profit".*

There is no further detail underpinning these statements, 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. While the statements may well be based upon Mr and Mrs T's recollections, there is little by way of supporting evidence to this effect – as the PR has confirmed that no witness statement or similar was taken from Mr and Mrs T prior to raising the complaint.

At our request, the PR obtained and provided a statement from Mr and Mrs T. Within this, Mr and Mrs T said:

> "*We were informed the price of a fractional product would be an investment and (we would) see a profit when sold in 19 years' time."*

This is the only reference to the product being marketed as an investment within their two-page statement. There is notably little detail as to how, when and by whom Mr and Mrs T were informed that they would make a profit. It is unclear to me if they are referring to the 2015 sale at issue in this complaint, their previous Signature Collection membership or subsequent upgrade. And while they have expressed some unhappiness with the availability of holiday options, they have not expressed any particular concern about the investment element of the membership and their prospects of a return – which I would expect to see if this had been a key reason for their decision to purchase the membership.

More significantly, there is nothing that makes me think any promotion of the membership as an investment was integral to their decision to take it out. Rather, their testimony suggests to me that it was the prospect of better holidays that motivated them to purchase the membership at issue. I note, in reference to the sale at issue, they say:

> *"We insisted our intention was to use the points to access holidays further afield … We were persuaded to increase our membership to a higher level to give us more points."*

They also explain that accessing weeks during school holidays was "*one of our main priorities*" and that they "*only wanted quality accommodation in the school holidays*". They say they trusted the Supplier to "*provide quality good value family holidays*" and felt they "*had to upgrade to get any possible date to suit our needs*". So it seems to me that the acquisition of more points and the increased options that offered them was the motivation for them to purchase the membership in question.

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 Mr and Mrs T'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 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 T and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

Unfair contract terms

The PR also says that the contractual terms included unfair default provisions. The PR has highlighted a particular provision as being unfair. But the wording it has quoted is not present in Mr and Mrs T's Purchase Agreement. There are similar clauses, though, so I have considered the points they make in relation to these.

On my reading, the provisions in question effectively mean that if Mr and Mrs T were to fail to make a payment due under the Purchase Agreement (such as the annual management charges), they could, ultimately, forfeit their "fractional rights". Non-payment could therefore have significant consequences for Mr and Mrs T, such as the loss of their share in the Allocated Property and the holidays to which their points

would otherwise entitle to them – without getting back any of the money they've paid to acquire these rights.

To conclude that a term in the Purchase Agreement rendered the credit relationship between Mr and Mrs T and the Lender unfair to them, I'd have to see that the term was unfair under the CRA and operated against Mr and Mrs T in practice.

In other words, it's important to consider what real-world consequences, in terms of harm or prejudice to Mr and Mrs T, have flowed from such a term because those consequences are relevant to an assessment of unfairness under Section 140A. Indeed, the judge in the very case that this aspect of the complaint seems based on (Link Financial v Wilson [2014] EWHC 252 (Ch)) attached importance to the question of how an unfair term had been operated in practice: see [46].

As a result, I don't think the mere presence of a contractual term that was/is potentially unfair is likely to lead to an unfair credit relationship unless it had been applied in practice.

With that in mind, it seems unlikely to me that the contract term cited by the PR has led to any unfairness in the credit relationship between Mr and Mrs T and the Lender for the purposes of Section 140A of the CCA. I say this because I cannot currently see that the term was actually operated against Mr and Mrs T, let alone unfairly.

Moreover, as I haven't seen anything else to suggest that there are any other reasons why the credit relationship between the Lender and Mr and Mrs T was unfair to them because of an information failing by the Supplier, I'm not persuaded it was.

Section 140A: Conclusion

In conclusion, therefore, given all of the facts and circumstances of this complaint, I don't think the credit relationship between the Lender and Mr and Mrs T was unfair to them for the purposes of Section 140A. And taking everything into account, I think it's fair and reasonable to reject this aspect of the complaint on that basis.

The complaint about the Credit Agreement being unenforceable because it was arranged by a credit broker that was not regulated by the FCA to carry out that activity

The PR says that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't and isn't permitted to enforce the Credit Agreement as a result.

However, having looked at the Financial Ombudsman Service's internal records, I can see that the business named on the Credit Agreement as the credit intermediary was, at the Time of Sale, authorised by the FCA. The Lender says the Supplier's permissions covered credit broking. So in the absence of any evidence to the contrary, I am not persuaded that the Credit Agreement was arranged by an unauthorised credit broker.

At the time of my provisional decision, I deferred my conclusions on the matter of commission disclosure in order to review that issue further. I've since written to the parties setting out my thoughts on why I wasn't persuaded to uphold this aspect of the complaint. I said:

Mr and Mrs T's professional representative ('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 Mr and Mrs T in arguing that their credit relationship with Shawbrook 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 Shawbrook and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr and Mrs T, 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 T 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 currently think any such failure is itself a reason to find the credit relationship in question unfair to Mr and Mrs T.

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 Mr and Mrs T 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.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, Shawbrook didn't pay the Supplier any commission 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 currently 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 Mr and Mrs T.

Commission: The Alternative Grounds of Complaint

While I've found that Mr and Mrs T's credit relationship with Shawbrook wasn't unfair to them 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 Mr and Mrs T'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 Mr and Mrs T (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 Mr and Mrs T 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 them. 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 Mr and Mrs T would still have taken out the loan to fund their purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

In conclusion, given the facts and circumstances of this complaint, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs T'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:

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

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

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

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

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

- Principle 6
- Principle 7
- Principle 8

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

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 Mr and Mrs T 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 T as an investment at the Time of Sale.

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

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

I accepted in my PD that the membership may well have been marketed as an investment to Mr and Mrs T in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. I also explained that while the Supplier's sales processes left open the possibility that the sales representative may have positioned Signature Collection membership as an investment, it wasn't necessary for me to make a finding on this as it is not determinative of the outcome of the complaint. I explained that regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. The PR's response to my PD hasn't changed my view of this, and so whether the Supplier's breach of Regulation 14(3) led Mr and Mrs T to enter into the Purchase Agreement and the Credit Agreement remains an important consideration.

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

The PR objects to the approach I've taken in assessing this aspect of the complaint, believing that I have detracted from the judgment in *Shawbrook & BPF v FOS*[1] and the case law that contributed to it, by requiring Mr and Mrs T 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, Mr and Mrs T were highly motivated by the improved holiday options available through Signature Collection membership – which was a factor in my overall conclusion in light of all the available evidence that they would, on balance, have pressed ahead with their purchase of the Signature Collection membership even if there had been a breach of Regulation 14(3).

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 for the reasons given in my PD and above, I still do not think that any breach of Regulation 14(3), if there was one, was material to Mr and Mrs T's decision to purchase the Signature Collection membership.

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 Mr and Mrs T 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

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 T'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 Mr and Mrs T to accept or reject my decision before 23 February 2026.

Ben Jennings
Ombudsman

[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').