

The complaint

Mr M complains Shawbrook Bank Limited (the “Lender”) has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the “CCA”) and has participated in an unfair credit relationship with him under Section 140A of the CCA.

Mr M is represented in his complaint by a professional representative (“PR”).

What happened

I issued a provisional decision on this complaint on 14 August 2025, in which I set out the background to the matter and my provisional findings. A copy of that provisional decision is appended to and forms part of this final decision, so it’s not necessary to go over all the details again.

However, to summarise briefly:

- Mr M purchased a timeshare from a timeshare provider (the “Supplier”) on 30 January 2018, trading in a previous timeshare he’d bought from the Supplier in April 2017. The timeshare was in the Supplier’s “Fractional Club”, and it was asset-backed, meaning it entitled Mr M to a share in the net sale proceeds of a specific timeshare apartment (the “Allocated Property”) when his timeshare contract was due to end.
- The timeshare Mr M purchased in January 2018 differed from his earlier timeshare in terms of how it could be used. The earlier timeshare entitled Mr M to 1,200 “points” every other year, which could be exchanged for holiday accommodation in the Supplier’s portfolio. The later timeshare entitled Mr M to 900 points every year. The cost of the later timeshare was stated to be £6,815 after trading in the earlier timeshare. This was financed by a loan (the “Credit Agreement”) from the Lender which also consolidated a debt relating to Mr M’s earlier purchase. The loan was for £17,198.
- Mr M later complained, through PR, that *both* timeshares had been mis-sold. This complaint relates only to the January 2018 purchase. Broadly speaking, Mr M complained of misrepresentations by the Supplier giving him a claim against the Lender under Section 75 of the CCA, and matters which were alleged to have rendered his credit relationship with the Lender unfair to him within the meaning of Section 140A of the CCA.
- The Lender failed to respond to the complaint within a reasonable time, and the matter was then referred to the Financial Ombudsman Service.

In my provisional decision, I concluded that the complaint ought not to be upheld. The full reasons for this are set out in the appended document, but to summarise again:

- Some of the misrepresentations Mr M had complained about were not in fact misrepresentations (because they had been true), while others were poorly

evidenced and/or lacking the specifics and context which would have allowed me to reach a conclusion that a specific false statement of fact was made by the Supplier.

- While Mr M had put forward a host of reasons why the credit relationship between him and the Lender had been rendered unfair to him, I wasn't persuaded that this was the case. I noted that just because something had gone wrong didn't necessarily mean a credit relationship would be unfair. Regarding Mr M's specific concerns:
 - I thought it unlikely Mr M's ability to exercise a decision to buy the Fractional Club membership had been impaired significantly by pressure from the Supplier. I noted Mr M had had a cooling off period which he'd not used.
 - There was a general lack of evidence regarding aggressive sales practices.
 - Mr M had not provided evidence that the Credit Agreement was unaffordable, which he would need to have shown to demonstrate that any failings in the Lender's affordability checks, had caused unfairness.
 - While it was possible there had been some information failings on the Supplier's part during the sales process, evidence had not been offered to show that these had led to harm or unfairness arising to Mr M in practice.
 - It was possible the Supplier had sold or marketed the Fractional Club product to Mr M as an investment, in breach of Regulation 14(3) of the Timeshare Regulations. However, I didn't think that any such breach had been material to Mr M's purchasing decision. I thought the limited testimony available, and the contemporary documents, suggested he had been motivated to make the purchase which is the subject of this complaint, by the prospect of improved holiday rights under his membership, not because he hoped or expected a financial gain to come of it.

Mr M had also complained that the Lender may have paid the Supplier an excessive and undisclosed commission for arranging the Credit Agreement. At the time of my provisional decision, I did not have enough information about the commission arrangements in this case to be able to reach a conclusion on this point. After my provisional decision, the information became available to me and I wrote to PR to explain that I did not think the commission arrangements in Mr M's case had rendered his credit relationship with the Lender unfair to him, or mean his complaint should be upheld for another reason. While a commission had been paid, it was very low at 5% of the amount borrowed, and I'd not found any other aspect of the commission arrangements that led to unfairness.

The Lender accepted my provisional decision, while PR, on behalf of Mr M, did not. It aired concerns it had about various procedural matters, such as excessive delays in resolving the complaint. I could summarise its arguments as follows:

- It accepted my analysis of the commission arrangements and did not seek to pursue this point further.
- It felt Mr M's testimony clearly demonstrated that he was told by the Supplier that the Fractional Club product was an investment and that he would make a profit from it. This had been key to his understanding of the product and was a material factor in his decision to buy it. It said that Mr M was prepared to sign a sworn affidavit and it requested an oral hearing so Mr M had an opportunity to present his evidence directly.

- Mr M's complaint was very similar to others which had been successful at the Financial Ombudsman Service on the grounds timeshares had been marketed as investments. My provisional decision didn't follow the precedent set in other cases. Mr M's witness statement had been more detailed than others in complaints which had been successful, so it was irrational not to uphold his complaint.
- I had been wrong to conclude that, because the prospect of the Fractional Club product being an investment had not been the main motivation for Mr M's purchasing decision, that a breach by the Supplier of Regulation 14(3) of the Timeshare Regulations hadn't been material and therefore lead to an unfair credit relationship. Mr M had said he had been told he would make a profit on resale of the Fractional Club membership and this was enough to demonstrate materiality.

The case has been returned to me to review once more.

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.

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.

PR's further comments in response to the provisional decision relate to the issue of whether the credit relationship between Mr M and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to Mr M as an investment at the Time of Sale, and what this meant for the fairness of the credit relationship.

As outlined in my provisional decision, 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 provisional decision. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. They have also not disagreed with the position I have adopted on the matter of the commission paid by the Lender to the Supplier. 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 provisional decision and in my later communication to PR. So, I'll focus here on 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 noted above, PR has requested an oral hearing and offer to produce a sworn affidavit from Mr M.

Oral hearings are something that I can direct happen under DISP 3.5.5. However, the Financial Ombudsman Service is set up to decide complaints informally and it is for me as the decision maker to determine what evidence I think I need to determine what is a fair and reasonable outcome to a complaint. Having considered everything, I do not think I need to hold an oral hearing to fairly determine this complaint.

This is because both parties have already provided lengthy submissions. In this case, I have statements from Mr M, other evidence, including the documents from the sale, and full submissions from PR and the Lender to decide what I think was most likely to have happened. I'm satisfied I'm able to weigh up what Mr M has said against the available evidence and arguments to determine what I think happened on the balance of probabilities without the need for an oral hearing. And as it's in everyone's interest to resolve this complaint as soon as possible, to grant a hearing at such a late stage would inevitably prolong the resolution of this case.

Regarding PR's offer to have Mr M provide a sworn affidavit, I must remind them that we don't have strict evidential requirements. We aren't expected to decide complaints only after receiving sworn evidence. And our jurisdiction is investigative rather than adversarial. I remain of the view that the information we have on file is enough to cover all the issues I need to consider to reach a fair decision. And as I've considered everything on file, including the specific points raised by PR as part of its request, I'm of the view that a hearing or a sworn affidavit is not required.

As I explained in my provisional decision, although I found there was a possibility that the Supplier breached Regulation 14(3) at the Time of Sale, I didn't think Mr M's testimony suggested that the hope or expectation of the purchase being a profitable investment, was material to his purchasing decision. To quote from my provisional decision:

"What emerges from the limited testimony and the contemporaneous paperwork is that Mr M was encouraged to increase his holiday rights by changing to an annual membership, because he was unable to take the holidays he wanted to take with his existing membership. The evidence does not support a conclusion that, if the Supplier marketed the product as an investment, that this was a material factor in Mr M's purchasing decision."

I noted that while Mr M had recalled the Supplier *saying* the product was an investment, this was all he had to say about that particular aspect of the product. He didn't say or suggest that it formed a part of his decision-making process, although he did specifically refer to *other* motivations.

So, I wasn't persuaded that the evidence suggested that Mr M purchased this particular upgrade to his Fractional Club membership in whole or in part down to any breach of Regulation 14(3).

PR has stated that my provisional decision is inconsistent with previous decisions issued by the service, and has provided examples it feels demonstrates this. To this I would say each

complaint turns on its own facts and merits, so just because similar (but not identical) sets of circumstances led different Ombudsmen to reach different set of conclusions, doesn't mean that precedent is not being followed or that any of those Ombudsmen (including me) were wrong to reach the conclusions they did. My decision was based on the specific facts, circumstances and evidence in Mr M's case.

PR has also reiterated that the judgment handed down in *Shawbrook & BPF v FOS* asserted that the relevant question in this circumstance is whether the breach of regulation 14(3) was a material factor in the decision to purchase, not whether it was the only factor or principal one. It feels that the testimony Mr M has provided demonstrates that this was the case. But, as I explained in my provisional decision, I'm not persuaded from the testimony that Mr M has adequately demonstrated that the promise of profit was a motivating factor to his decision to move ahead with the purchase – principal or otherwise.

I note that a further statement from Mr M, in the form of a short email, accompanies PR's recent submissions. PR hasn't explained the significance of Mr M's email, but I assume it considers that it reinforces the arguments it has made. However, there are two main problems with Mr M's recent email. Firstly, it has the same problems as his earlier witness statement, in that while it recalls the Supplier having said the product was an investment, he doesn't say or suggest that this is why he bought it. Secondly, with this evidence there is a real risk that Mr M's testimony could have been coloured by the Investigator's view and/or the outcome in *Shawbrook & BPF v FOS* and/or my provisional decision. And, on balance, the timing in which this evidence has been provided makes me conclude that, even if it had supported PR's arguments, I can place little weight on it.

My final decision

For the reasons explained above, and in my appended provisional decision, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 February 2026.



Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at the same overall set of conclusions as our Investigator, but I've explained my findings in a bit more detail. It's also necessary for me to consider the implications of a recent court judgment before I make my decision final. So I'm issuing a provisional decision to allow a further opportunity for submissions to be made.

The deadline for both parties to provide any further comments or evidence for me to consider is **28 August 2025**.

The complaint

Mr M complains Shawbrook Bank Limited (the 'Lender') has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the 'CCA') and has participated in an unfair credit relationship with him under Section 140A of the CCA.

Mr M is represented in his complaint by a professional representative ('PR').

Background

This complaint relates to a timeshare purchase made by Mr M from a timeshare provider (the 'Supplier') on 30 January 2018. Mr M had previously made a purchase from the same timeshare provider.

- The initial purchase was made in April 2017, of a membership in the Supplier's 'Fractional Club'. Mr M bought 1,200 points in the Fractional Club, which could be used every other year to book holiday accommodation. This type of timeshare was asset-backed, meaning it also included a share in the future sale proceeds of a specific timeshare apartment. This purchase cost £10,383.
- The purchase this complaint is about was made on 30 January 2018, and involved swapping the existing membership for a Fractional Club membership with 900 points which could be used annually, rather than every other year.
- The cost of the purchase was stated to be £6,815, following the trade-in of the existing membership. Mr M's outstanding loan with a different lender from the 2017 purchase (£10,383) was consolidated into a larger loan with the Lender of £17,198.
- In January 2023 Mr M, through PR, wrote to the Lender to complain, seeking to find it responsible for the Supplier having mis-sold the timeshare and associated loan. The individual mis-selling concerns raised by PR can be found in the table below, but broadly-speaking they included misrepresentations for which Mr M sought to hold the Lender liable under Section 75 of the CCA, and matters which were alleged to have rendered the credit relationship between him and the Lender unfair under Section 140A of the CCA.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I do not think it should be upheld.

My decision is based on what I believe is most likely to have happened. While I have considered every point raised, this summary outlines the reasons for my provisional findings.

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 no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here.

In the interests of efficiency and clarity, I have set out my findings in a table. Where a particular point has required more detailed explanation or analysis, this follows the table.

Misrepresentations	Reasons why this point doesn't succeed
It was falsely represented that the product was an investment and a share in property.	This was not false, because the product included an investment feature and provided an interest in the sale proceeds of a specific property.
It was falsely represented that the product had a guaranteed or automatic exit date.	There's insufficient persuasive evidence the Supplier claimed this to be the case. The paperwork from the time indicates only that the property would be marketed for sale after a certain number of years.
It was falsely represented that Mr M would get better availability in a high standard of accommodation in exclusive resorts.	The allegations are somewhat vague and there is insufficient evidence that a specific false statement of fact was made. The contemporary paperwork warns that bookings are subject to availability and on a first-come, first-served basis. The Supplier's marketing materials do not say or suggest its resorts could only be used by members.
Matters allegedly rendering the credit relationship unfair	Reasons why this point doesn't succeed
Mr M was pressured into making his purchase.	Mr M did not use his cooling-off period to cancel the purchase, which I would have expected had he only purchased because he was pressured into doing so. There is little evidence of what specifically the Supplier said or did which meant Mr M felt he had no choice but to purchase.
The Supplier engaged in aggressive sales practices, contrary to consumer protection regulations.	The evidence in this case is very limited, and there's not enough for me to be able to conclude the Supplier breached the relevant consumer protection regulations.
The Lender failed to carry out the creditworthiness/affordability checks required by industry guidance or regulations.	Mr M has not provided evidence that the loan was actually unaffordable, which would need to be shown for his complaint to succeed on this point.

The Supplier failed to provide sufficient information about the ongoing costs of the timeshare, such as maintenance fees.	It's possible the information provided by the Supplier was not as detailed or clear as it should have been, but I've not seen evidence that this has led to significant harm or unfairness to Mr M arising in practice.
The Supplier's terms and conditions contain unfair terms, which include its ability to repossess the membership and retain all sums paid in the event of small breaches by Mr M.	It's possible some of the Supplier's terms have the potential to operate in an unfair way, but I've not seen evidence that the terms have operated in that way in Mr M's case, or are likely to operate in that way in the future.
The Supplier marketed and sold the membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations.	There's a possibility the Supplier marketed the product in this way, however I'm unable to conclude that it had a material impact on Mr M's decision to make his purchase, which would need to be shown in order to conclude the credit relationship had been rendered unfair. See further details below.
The Supplier was paid a commission by the Lender which was not properly disclosed and may have been excessive.	I'm currently unable to decide this point, as the amount of commission is presently unknown and it will be necessary to consider this in light of a recent Supreme Court judgment. See further details below.

The reasons why I've been unable to conclude any potential marketing by the Supplier of the Fractional Club product to Mr M as an investment is likely to have had a material impact on his decision to make the January 2018 purchase, are based chiefly on difficulties I have with the very limited direct testimony relating to the purchase, and are as follows.

The testimony does not appear to be from Mr M

I have seen a witness statement dated 11 October 2019 which has been submitted by PR to support Mr M's complaint. However, this witness statement appears to have been prepared based on a conversation with someone else – Ms I. I am aware that Ms I purchased the Fractional Club membership with Mr M jointly, but she was not a party to the credit relationship which has been alleged to have been unfair. If I conclude that this statement contains only Ms I's recollections then I am in a position where I have no recollections from Mr M whatsoever, and that is not a reasonable basis for me to be able to conclude that a material reason why he purchased the Fractional Club membership in 2018, was because he hoped or expected that it would be a profitable investment.

The testimony does not indicate the product was purchased for its investment features, and points towards other reasons being material

If I assume the witness statement is also representative of Mr M's recollections (after all, he and Ms I were presumably present together during the sales process) then I'm afraid it does not suggest to me that the investment aspect of the product was material to his purchasing decision. And that is because while he recalls the Supplier marketing the product in this way, this is all he has to say about it. Mr M goes into more detail on other matters: he was told by the Supplier that what he'd bought previously was not good enough for the holidays he wanted to take, and that to get the most from his membership he'd need to make another purchase. Then, when he explains why he is dissatisfied later on in the statement, he says it is because he felt he was lied to regarding the accommodation, holiday availability and exclusivity. This suggests to me that it was interest in the holiday related features of the product which were behind his purchase.

The purchase history is consistent with Mr M's motivation having been to improve the holiday-related aspects of his membership

While, on the face of it, Mr M decreased the number of points he had when making the 2018 purchase, from 1,200 to 900, he was able to use those points each year rather than every other year (and the Supplier typically allowed unused points to be “banked” for subsequent years, and points to be “borrowed” from the following year). So really, it was a significant increase in his overall holiday rights.

What emerges from the limited testimony and the contemporaneous paperwork is that Mr M was encouraged to increase his holiday rights by changing to an annual membership, because he was unable to take the holidays he wanted to take with his existing membership. The evidence does not support a conclusion that, *if* the Supplier marketed the product as an investment, that this was a material factor in Mr M's purchasing decision.

Mr M's commission complaint

One of Mr M's other concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the loan. The Supreme Court's recent judgment in *Johnson and Wrench -v- FirstRand Bank, and Hopcroft -v- Close Brothers* [2025] UKSC 33 (*'Johnson, Wrench and Hopcroft'*) clarified the law on commission payments – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer–credit brokers. At present, I do not know what, if any, commission was paid by the Lender in respect of Mr M's loan. Once I find out more information about this, I will finalise my findings on this complaint.

Conclusions

Given my findings in relation to the various mis-selling allegations made by PR on Mr M's behalf in relation to the 2018 purchase of the Fractional Club membership, I do not think the Lender treated Mr M unfairly by failing to honour a Section 75 claim from him, nor do I think the credit relationship between him and the Lender was rendered unfair to him for the purposes of Section 140A of the CCA. I will be able to finalise my position on the question of commission, once more information is known about this.

My provisional decision

For the reasons explained above, I'm not currently minded to uphold Mr M's complaint.

Will Culley
Ombudsman