

The complaint

Mr and Mrs R's complaint is, in essence, that Shawbrook Bank Limited 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 R 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 'Fractional Club' – which they bought on 12 October 2016 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,380 fractional points, for which they paid £7,626 after trading in their existing timeshare membership (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs R 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.

To help pay for their Fractional Club membership, Mr and Mrs R took out a loan of £24,163 with Shawbrook (the 'Credit Agreement'). Some of the loan funds were used to repay an existing loan, taken with a different lender to fund the purchase of their previous membership.

Mr and Mrs R – using a professional representative (the 'PR') – wrote to Shawbrook on 1 May 2024 (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 Mr and Mrs R's concerns as a complaint and issued its final response letter on 20 May 2024, rejecting it on every ground.

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

Mr and Mrs R disagreed with the Investigator's assessment and asked for an Ombudsman's decision, so it was passed to me.

I considered the matter and issued a provisional decision (the 'PD'). 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 think this complaint should be upheld.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide

what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

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

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

There are, though, certain time limits that apply – and I think these mean Mr and Mrs R'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 R'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 R entered into the Purchase Agreement and Credit Agreement on 12 October 2016. They raised their claim under Section 75 within the Letter of Complaint dated 1 May 2024 – more than six years later.

That being the case, I don't think Shawbrook 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.

Section 75 of the CCA: the Supplier's Breach of Contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, Shawbrook is also liable.

The PR says that Mr and Mrs R could not access the holidays that the Supplier led them to believe the membership would be entitled to. That was framed, in the Letter of Complaint, as an alleged misrepresentation. However, on my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement. And this may not be time-barred in the same way as the Section 75 claim based on the alleged misrepresentations at the Time of Sale – as it is only when the alleged breach of contract occurred that Mr and Mrs R's cause(s)

of action arose.

Mr and Mrs R haven't specified when they feel such a breach occurred, having given no details of occasions on which they were unable to access the holidays they were expecting. In any event, accepting that something along these lines may have occurred within the six years preceding the Letter of Complaint, I do not think there are sufficient grounds to consider that Shawbrook has acted unfairly.

I say this because, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mr and Mrs R states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday on a number of occasions. I accept that they may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think Shawbrook is liable to pay Mr and Mrs R any compensation for a breach of contract by the Supplier. And with that being the case, I do not think Shawbrook acted unfairly or unreasonably in relation to this aspect of the complaint either.

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

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

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

Mr and Mrs R's complaint about Shawbrook 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.

I have firstly considered whether the misrepresentations they allege were made by the Supplier in the context of their Section 75 claim could have caused any unfairness for the purposes of Section 140A.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs R were:

1. Told that they had purchased an investment that would "considerably appreciate in

- value”.
2. Promised a considerable return on their investment because they were told that they would own a share in a property that would considerably increase in value.
 3. Made to believe that they 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 enough 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 point 3, while it’s *possible* that Fractional Club membership was misrepresented at the Time of Sale for this reason, I don’t think it’s *probable*. The Purchase Agreement that Mr and Mrs R signed explained that they were ceding their Fractional Rights – the rights of exclusive use of the Allocated Property – in exchange for their Fractional Points, to exchange for the booking of other holiday resorts. I find it unlikely that the Supplier would’ve made promises of the type suggested in the Letter of Complaint in such clear contradiction of the paperwork Mr and Mrs R were given at the same time.

So, while I recognise that Mr and Mrs R and the PR have concerns about the way in which Fractional Club membership was sold by the Supplier, I do not think this caused any unfairness in Mr and Mrs R’s credit relationship with Shawbrook such that it warrants a remedy.

Turning to the points specifically raised in relation to the potential unfairness of the relationship between Mr and Mrs R and Shawbrook, the PR said in the Letter of Complaint that the right checks weren’t carried out before the loan was provided. 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 Mr and Mrs R was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with Shawbrook was unfair to them for this reason. But from the information provided, I am not persuaded that the lending was unaffordable for Mr and Mrs R.

The PR also says that Mr and Mrs R were rushed into signing the contractual paperwork at the end of a long sales meeting, without having sufficient time to properly consider the implications of the agreement into which they were entering. I acknowledge and appreciate that Mr and Mrs R may have felt weary after a sales process that went on for a long time. But they have said little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel the membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs R made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr and Mrs R's credit relationship with Shawbrook was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR says the credit relationship with Shawbrook was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to them as an investment in breach of 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 Mr and Mrs R's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club membership as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But the PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mr and Mrs R were told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs R the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs R as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to

prospective purchasers, such as Mr and Mrs R, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr and Mrs R 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 Mr and Mrs R rendered unfair?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr and Mrs R 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 Mr and Mrs R and Shawbrook that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

To help me decide this point, I've carefully considered what Mr and Mrs R have said in the course of their complaint about how the membership was sold to them and their 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 Mr and Mrs R were told that they 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.

When referring the complaint to us, the PR included a statement in Mr and Mrs R's own words. It is brief, comprising three short paragraphs that set out their recollections of their purchase from the Supplier. Within it, they said:

"The loan was explained to us that we will be paying like we pay for our house mortgage but this is different as after 19 years of payment we will get our money back."

Mr and Mrs R's comments further support the allegation that the Supplier marketed and sold the Fractional Club membership as an investment. As above, I accept the possibility that the membership was positioned as an investment in the manner Mr and Mrs R have alleged here, which may have included the suggestion that they would get

some money back at the end of the membership term.

What I am considering here, though, is whether any such positioning of the Fractional Club membership as an investment was material to Mr and Mrs R's decision to purchase it (and in turn, therefore, to enter into the Credit Agreement). Ultimately, Mr and Mrs R's comments are not enough for me to think that it was. They do not provide any meaningful recollections as to their motivation for the purchase – and while the investment element is recalled in their brief statement, so too are other factors (such as the holiday options they were promised), with no detail that would help me evaluate the level of materiality in the decision they made.

Also, Mr and Mrs R purchased more than one membership from the Supplier – as noted above, they traded in an existing membership when purchasing the one at issue within this complaint – yet no mention is made of this in their statement. They do not specifically say that their recollections relate to the sale at issue within their complaint, leaving open the possibility in my mind that they may be recalling their prior purchases. This possibility is further reinforced by the fact that Mr and Mrs R suggest that they were sold the membership at issue during a meeting they had been invited to by the Supplier while on a holiday gained through an introduction from a colleague. But that does not appear to have been the case as, at the Time of Sale, Mr and Mrs R were already longstanding members of the Supplier (and so would not have been eligible for such a 'referral' holiday, as I understand it).

Aside from Mr and Mrs R's comments, I've also borne in mind the broader circumstances at the Time of Sale. As I've said, Mr and Mrs R held an existing membership with the Supplier. They traded this in towards this subsequent membership, through which they purchased a larger number of points and thereby increased the holiday options available to them. So I think an obvious motivating factor in Mr and Mrs R's decision to take out the membership in question was the greater "purchasing power" that the additional points offered them.

I think it is also relevant that Mr and Mrs R were upgrading from an existing fractional club membership, under which they already held a share in the net sale proceeds of a timeshare property. Mr and Mrs R would have increased that share – and therefore the level of potential return they could expect – under the new membership. But Mr and Mrs R do not refer to this increase in their investment as a factor in their decision-making within their statement, as I might expect them to have done when reflecting on why they upgraded from one type of fractional ownership timeshare membership to another (as opposed to, for example, upgrading from a 'non-fractional' to a fractional one).

Alongside this, I am conscious that Mr and Mrs R's statement was provided some eight years after the Time of Sale. 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. I'm conscious that Mr and Mrs R's statement was only made after the influential judgment in *Shawbrook & BPF v FOS*¹ was handed down.

Weighing all of this up, I do not think the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr and Mrs R decided

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).

to go ahead with their purchase. That doesn't mean they weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs R themselves don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision Mr and Mrs R ultimately made.

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

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

The PR says that Mr and Mrs R were not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership. The PR also says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

As I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I acknowledge that it is also possible that the Supplier did not give Mr and Mrs R sufficient information, in good time, on the various charges they could have been subject to as Fractional Club members in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mr and Mrs R nor the PR have persuaded me that they would not have pressed ahead with their purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mr and Mrs R in practice, nor that any such terms led them to behave in a certain way to their detriment. And with that being the case, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

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 R'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 R 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 R, 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 R 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 R.

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 R 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 R.

Overall, therefore, 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 R.

Commission: The Alternative Grounds of Complaint

While I've found that Mr and Mrs R'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 R'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 R (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 R 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 R 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 R'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. It did not accept the PD and provided some further comments it wanted me to take into account.

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

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

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

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

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

The FCA's Principles

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

- Principle 6
- Principle 7
- Principle 8

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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

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

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

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

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 Fractional Club membership to Mr and Mrs R 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 R 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 Fractional Club 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 R 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 R 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 R in the course of their complaint. I recognise the PR has interpreted Mr and Mrs R'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* and the case law that contributed to it, by requiring Mr and Mrs R 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 R were highly motivated by the holiday options offered by the Supplier – 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 Fractional Club membership even if there had been a breach of Regulation 14(3).

I noted in my PD that Mr and Mrs R appeared to suggest that they were sold the membership at issue during a meeting they had been invited to by the Supplier while on a holiday gained through an introduction from a colleague. That seemed inaccurate to me given Mr and Mrs R were existing members of the Supplier (although, I accept, not "longstanding" ones given their prior purchase was made six months earlier). The PR says this information did indeed relate to a separate sale by way of background. Taking that at face value doesn't lead me to a different view of things as ultimately I still do not consider there to be enough evidence to show that Mr and Mrs R would not have proceeded with the purchase in question were it not for the membership having been marketed as an investment opportunity.

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 R's decision to purchase the Fractional Club membership.

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

The PR has also raised an 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 Mr and Mrs R in the future, as any delay could mean a delay in the realisation of their 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 2033. This same date is set out under point 1 of the Members Declaration, which has been initialled and signed as being read by Mr and Mrs R. This date indicates that the membership has a term of 17 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.” (my emphasis)

It seems clear to me that the contractual commencement date for the start of the sales process is 31 December 2033. This actual date is repeated in the sales documentation as I’ve set out above. The Information Statement is, in my view, reflective of the fact that most fractional memberships were set up to run for nineteen years. But not all memberships attached to a given Allocated Property were sold at exactly the same time, so often the time left before the sale date was less than nineteen years at the actual time of sale. I accept that this could be confusing, however I do not think Mr and Mrs R were misled by this at the Time of Sale. 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 Mr and Mrs R 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 R’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 I’ve explained, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R and Mrs R to accept or reject my decision before 23 February 2026.

Ben Jennings
Ombudsman