

## The complaint

Mrs H and Mr M'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') (2) deciding against paying a claim under Section 75 of the CCA and (3) lending money to them it ought to have known they could not afford to pay back.

## What happened

Mrs H and Mr M purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 28 May 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,494 fractional points and after trading in their existing timeshare, they ended up paying £6,897 for membership of the Fractional Club, which included the first year of annual membership fees.

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

Mrs H and Mr M paid for their Fractional Club membership by taking finance of £6,897 from the Lender in both of their names (the 'Credit Agreement').

Mrs H and Mr M wrote to the Lender on 27 March 2018 explaining they had not been made aware at the Time of Sale that the finance agreement with the lender was separate to the finance agreement taken with another lender in March 2012 to fund their previous timeshare. They said they had been experiencing financial difficulties as a result of this because they could not afford to repay two loans.

Mrs H and Mr M – using a professional representative (the 'PR') – also wrote to the Lender on 12 November 2019 (the 'Letter of Complaint') to raise a number of different concerns. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mrs H and Mr M's concerns as a complaint and issued a final response letter rejecting it on every ground. Mrs H and Mr M then referred the complaint to the Financial Ombudsman Service.

I issued a provisional decision in September 2025 explaining why I didn't plan to uphold Mrs H and Mr M's complaint. I said:

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

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

*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.*

*What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.*

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

*Where the Lender is exercising its rights and duties as a creditor under a credit agreement it is carrying on a regulated activity within scope of our compulsory jurisdiction under Article 60B(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the 'RAO').*

*In undertaking that activity, the creditor must honour liabilities to the debtor. So, if a debtor advances a valid section 75 claim in respect of the credit agreement, the creditor has to honour that liability and failing or refusing to do so comes under our compulsory jurisdiction.*

*The event complained of here is the Lender's refusal to pay Mrs H and Mr M's section 75 claim – which as far as I can see was brought to the lender by the PR on 12 November 2019. However, I can't see that the claim was ever directly addressed by the lender. It issued a final response letter on 12 June 2019, which it said addressed allegations of mis-sale made directly by Mrs H and Mr M in March 2019 (before the Letter of Complaint) but it hasn't detailed what those allegations were in the letter and it's not clear enough they ought to have been construed by it as a claim under section 75.*

*It appears therefore that Mrs H and Mr M may not have brought their claim under section 75 to the lender before 12 November 2019. This has implications for Mrs H and Mr M's complaint which I'll explain.*

*Creditors have no means of knowing what section 75 liabilities they may have, nor of investigating such liabilities nor of recovering them from suppliers, unless or until debtors raise section 75 claims against them; and raising the claim, if it's a valid one, brings the creditor under a duty then to honour its liability.*

*But it would not be fair or reasonable to require a creditor to respond to section 75 claims however long in the past they arose. And our service must decide complaints based on what is fair and reasonable in all the circumstances of a case.*

*The Limitations Act 1980 (the 'LA') imposes a six-year limitation period on the relevant claims. Taking into account this time period, the particular nature of liability under section 75, and the need for the debtor to raise a section 75 claim against their creditor before any cause for complaint to our service can arise, I consider it was fair and reasonable for a creditor not to have to look into or honour a section 75 claim that was first raised with it by the debtor after the claim had become time barred under the LA.*

*The alleged misrepresentations happened when an agreement was entered into on 2 June 2013.*

*In these circumstances Mrs H and Mr M had brought their section 75 claim to the Lender on 12 November 2019 which is more than six years after they entered into an agreement with the Lender on 2 June 2013 – which I consider to be around the time when the cause of action for misrepresentation to have accrued.*

*Where it is unlikely a claim against the supplier could succeed due to the expiry of the likely relevant limitation periods of six years, I think it would have been fair and reasonable for the Lender to decline the section 75 claim.*

*However, even if the complaint brought by Mrs H and Mr M in March 2019 did include allegations which ought to have resulted in the lender considering its liability to them under section 75, or in fact were section 75 claims, along the same lines as those included in the Letter of Complaint, I don't find the lender has treated Mrs H and Mr M unfairly by declining to meet those claims. I'll explain why.*

*The PR said the Supplier told Mrs H and Mr M that their membership had a guaranteed end date when that was not true. No further evidence has been provided beyond the bare allegation made here. Nevertheless, while it does appear from the club rules that the sale can be delayed by up to two years in certain circumstances, any further delay beyond that requires the unanimous written consent of all fractional owners, in which Mrs H and Mr M are included. The testimony that has been provided doesn't suggest to me that Mrs H and Mr M would not have made their purchase had this been explained to them and I think they would in all likelihood have proceeded with it anyway. So, even if I were to accept that the Supplier made a guarantee about the end date (and I make no such finding), from what has been said I don't think this induced Mrs H and Mr M into purchasing Fractional Club membership. I don't think therefore the Lender ought to have met a claim for misrepresentation on this basis.*

*The PR said that Fractional Club membership had been misrepresented by the Supplier because Mrs H and Mr M were told that they were buying an interest in a specific piece of "real property" when that was not true. However, telling prospective members that they were buying a fraction or share of one of the Supplier's properties was not untrue. Mrs H and Mr M's share in the Allocated Property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give them that interest, it did not change the fact that they acquired such an interest.*

*Mrs H and Mr M said they thought the proceeds of their loan from the lender would repay existing finance they had with another lender that was used to purchase their previous timeshare. They've not provided much detail of what the Supplier said that made them think this would happen. And the contemporaneous loan paperwork makes no mention of it either. For example neither the Purchase Agreement nor Credit Agreement make any provision for the repayment of existing finance. So overall, the evidence does not suggest to me that the Supplier told Mrs H and Mr M that their previous loan would be repaid by the sum advanced to them under the Credit Agreement.*

*As for the rest of the Supplier's alleged pre-contractual misrepresentations, while I recognise that Mrs H and Mr M had concerns about the way in which their Fractional Club membership was sold, they have not persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for the other reasons they allege. There is little detail of what was said by the supplier beyond the bare allegations that have been made.*

*For these reasons, therefore, I do not think the Lender is liable to pay Mrs H and Mr M any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the section 75 claim in question.*

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

*Under Section 140A of the CCA, a debtor-creditor relationship can be found to have been or be unfair to the debtor because of one or more of the following: the terms of the credit agreement itself; how the creditor exercised or enforced its rights under the agreement; and any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement) (s.140A(1) CCA). Such a finding may also be based on the terms of any related agreement (which here, includes the Purchase Agreement) and, when combined with Section 56 of the CCA, on anything done or not done by the supplier on the creditor's behalf before the making of the credit agreement or any related agreement.*

*In relation to Mrs H and Mr M's argument that the Lender is responsible for the complaint about an unfair relationship, s.140C(2)(a) of the CCA states:*

*"references to the creditor or to the debtor under a credit agreement include references to the person to whom his rights and duties under the agreement have passed by assignment or operation of law"*

*Therefore, when a debt has been assigned to another firm, that firm steps into the shoes of the creditor, and for the purposes of the unfair relationship provisions if it is the creditor at the time when the relationship has ended, or – where it is ongoing – at the time the relationship is to be assessed for fairness then it is the debt purchaser (or assignee) whom is responsible under s.140A-C.*

*Assignment does not bring the relationship to an end, nor does it create a segmented relationship which allows a Court to find the original owner of the debt (or assignor) responsible for the time during which it was creditor.*

*Taking the above into account for the purposes of the complaint I'm deciding, in this case the Lender has provided a copy of a notice of assignment, dated 22 August 2023 explaining that ownership of the Credit Agreement was assigned from the Lender to a debt purchaser I'll refer to as 'A' on 31 May 2023. From looking at this, I am satisfied the debt was assigned to A.*

*Taking into account relevant law, the assignment of the debt by the Lender to another firm such that it is no longer a creditor for the purposes of the unfair relationship provisions at s.140A-C means I don't consider it fair and reasonable in all the circumstances to consider the complaint about an unfair relationship brought by Mrs H and Mr M against it.*

*I've taken into account that the Lender assigned its agreement with Mrs H and Mr M after they had referred their complaint to the ombudsman service, but I'm not persuaded this justifies a departure from the law as it relates to the responsibilities of assignor and assignee under s.140A-C.*

*In the circumstances, Mrs H and Mr M may be able to bring a complaint about participation in an allegedly unfair relationship against a regulated debt purchaser to our service, if a regulated debt purchaser is the current creditor under the agreement. However, they would need to complain to that business before we can become involved.*

***Mrs H and Mr M's complaint about irresponsible lending***

*I can in this case consider Mr F and Mrs F's complaint against the Lender about irresponsible lending, outside the confines of s.140 of the CCA.*

*Mrs H and Mr M made their concerns about the affordability of the repayments on their agreement known to the lender in their letter of 27 March 2018. This was within six years of the Lender's decision to lend. And, as far as I can see this complaint was addressed as part*

*of the Lenders final response letter in June 2019 and Mrs H and Mr M referred their complaint to this service within six months of this letter. So, their complaint about this was made in time under our rules.*

*We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me assess this complaint.*

*Before April 2014, the relevant regulator was the Office of Fair Trading ("OFT"). The OFT required lenders to complete a "borrower-focussed" assessment of affordability (in addition to a creditworthiness assessment), to see if the prospective borrower could have afforded to repay the lending in a sustainable manner. This is set out in the OFT's March 2010 guidance for creditors for irresponsible lending. A lender needed to consider the impact of any credit payments on the borrower and not just the likelihood of getting their money back.*

*There was no set list of checks a lender needed to complete. But the checks should have been proportionate to the circumstances of each loan – which might include considerations about the amount borrowed and the prospective borrower's borrowing history.*

*When asked, the Lender did not provide all of the information showing what checks it carried out or what the results of those checks were. However, even if I were to conclude the checks were not proportionate, I'd still need to consider whether proportionate checks would've shown the repayments were not affordable for Mrs H and Mr M. And based on the information I've been provided, that's not clear enough to me.*

*Mrs H and Mr M have provided copies of some of their bank statements from around the Time of Sale to help give an idea of their financial circumstances at that point in time. But even if I thought it would have been proportionate for the lender to have used those statements as a way of verifying their income and expenditure (and I make no such finding here) it's not clear enough from these statements that the monthly repayment due under the Credit Agreement would have been unaffordable for them. For example, I can't see from the statements that after accounting for their other monthly credit commitments, regular living expenses (inc. timeshare maintenance fees) and mortgage/rent that there was not sufficient disposable monthly income left over to make the loan repayment. So, from the available information, it's not clear to me that the Lender's decision to lend was irresponsible. I do not therefore plan to uphold Mrs H and Mr M's complaint about irresponsible lending.*

### ***Mrs H and Mr M's complaint about commission***

*I've already explained why I don't consider it fair and reasonable in all the circumstances to consider the complaint about an unfair relationship brought by Mrs H and Mr M against the Lender.*

*Putting the complaint about an unfair relationship aside, the Supplier's role as a credit broker was not a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mrs H and Mr M 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.*

*With that being the case, the remedies that might be available at law in relation to the payment of secret commissions are not, in my view, available to Mrs H and Mr M.*

*In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim(s), and I am not persuaded that the Lender was party to credit relationships with Mrs H and Mr M under the Credit Agreements that were unfair to them for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate them.”*

The Lender accepted my provisional decision. The PR didn't accept the proposed outcome. It made further submissions in support of Mrs H and Mr M's position.

I've since written to the parties again on the matter of commission disclosure setting out my further thoughts on why I wasn't persuaded to uphold this aspect of the complaint. I said I was still conscious that there might be some alternative grounds that could constitute separate and freestanding complaints to Mrs H and Mr M's allegation of an unfair credit relationship.

In respect of the first ground, whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because the Supplier took a payment of commission from the Lender without telling Mrs H and Mr M (that is, secretly), having noted relevant parts of the judgment handed down on 1 August 2025 in *Johnson v FirstRand Bank Ltd*, *Wrench v FirstRand Bank Ltd* and *Hopcraft v Close Brothers Ltd* [2025] UKSC 33 (“*Hopcraft, Johnson and Wrench*”)<sup>1</sup> I wasn't persuaded the Supplier – when acting as credit broker – owed Mrs H and Mr M a fiduciary duty, so I couldn't see how I could properly uphold on this ground.

The second ground I thought related to the Lender's compliance with 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 said the flat rate and amount of commission paid was such that it gave me no reason to think that any failure to disclose it to Mrs H and Mr M had a material impact on their decision to enter into the Credit Agreement. At £69.70, it was only 10% of the amount borrowed and even less than that (5.46%) as a proportion of the charge for credit. I thought Mrs H and Mr M would still have taken out the loan to fund their purchase at the Time of Sale had the commission arrangements been adequately disclosed at that time.

The PR did not accept my findings on this point either and made further comments it wished for me to consider. Having received and reviewed these, I'm now proceeding with my final decision.

In doing so, I'm conscious that the PR has made a series of assertions surrounding the provision of information relating to commission arrangements. These include, among other things, expressing doubt that the Lender has provided key information, requesting that the information we have received be shared with it in full, and asking that we do not proceed with a decision before this is done and it has had an opportunity to make further submissions.

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<sup>1</sup> the supreme court ruled that, in each of the three cases, 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.

For reasons I will explain in the course of this decision, I've concluded that it's appropriate for me to proceed with my determination, the PR's submissions notwithstanding

### **The legal and regulatory context**

The legal and regulatory context that I think is relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in previous correspondence with the parties. So there's no need for me to set this out again in detail here. I simply remind the parties that our rules<sup>2</sup> say that in considering what is fair and reasonable in all the circumstances of the complaint, I will 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.

### **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.

After considering the case afresh and having regard for what's been said in response to my provisional decision and in my subsequent correspondence], I find it offers no persuasive reason to depart from the conclusions I've previously set out. I'll explain why.

The PR originally raised various points of complaint, such as those giving rise to Mrs H and Mr M's section 75 claim, which I addressed in my provisional decision. In its response, it hasn't made any further comments in relation to most of its original points, or said anything that leads me to think it disagrees with my provisional conclusions in relation to those points. So I'll focus here on the points the PR *has* made in response

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

The PR has questioned whether my provisional conclusions run contrary to precedent decisions issued by my ombudsman colleagues and the judgment handed down in *Shawbrook and BPF v FOS*. I don't believe they do. However, for the avoidance of doubt, other decisions issued by other ombudsmen do not have a precedent effect like some court judgments might, and each ombudsman must determine each case on its own specific facts. Further, the judgment referred to did not make a blanket finding that all products of the type Mrs H and Mr M purchased were mis-sold in the way the PR appears to be suggesting.

I explained in my provisional decision that taking into account relevant law, the assignment of the debt by the Lender to another firm such that it is no longer a creditor for the purposes of the unfair relationship provisions at s.140A-C meant I didn't consider it fair and reasonable in all the circumstances to consider the complaint about an unfair relationship brought by Mrs H and Mr M against it.

The response the PR provided does not appear to address this finding and instead responds to findings I did not make in my provisional decision relating to the Supplier's alleged breach of Regulation 13(3) of the Timeshare Regulations. However, for the avoidance of doubt the PR's comments and evidence do not persuade me my conclusion on the alleged unfair relationship was unfair or unreasonable. So, my findings remain the same.

Although I have touched upon this in my previous communication to the parties, on reflection, given that I've concluded it isn't fair and reasonable in all the circumstances to

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<sup>2</sup> Financial Conduct Authority ("FCA") Handbook – DISP 3.6.4R ("R" denotes a rule).

consider the complaint about an unfair relationship brought by Mrs H and Mr M against the Lender, I do not find it necessary to make findings in this decision in respect of the commission arrangements insofar as they may have rendered Mrs H and Mr M's relationship with the Lender unfair.

### **Commission: The Alternative Grounds of Complaint**

The PR has asked for the documents the lender has provided to show the commission arrangements between the Lender and the Supplier. While I appreciate the PR would like to have full disclosure of all of the documents and information the Lender has provided, our rules do not require me to provide this when dealing with a complaint.

As the PR will be aware, under DISP 3.5.9R I may, where I consider it appropriate, accept information in confidence (so that only an edited version, summary or description is disclosed to the other party). I'm satisfied that agreements between the Lender and the Supplier are commercially sensitive and that the summary information on commission arrangements we've already shared with the PR is appropriate in this case.

The PR's response doesn't offer anything that leads me to think that, for the most part, any of the factors it has referenced were in fact at play in Mrs H and Mr M's case. It hasn't, for example, provided evidence to show the existence of commercial or contractual ties that were concealed from Mrs H and Mr M, any persuasive reasons to conclude that the Supplier's role was that of advisor to Mrs H and Mr M, or to show that any other conflict of interest arose from the roles the Supplier did perform.

I'm satisfied the Lender has provided sufficient information in response to my enquiries to enable me to reach a conclusion about its commission arrangements with the Supplier. I've seen nothing in this case that leads me to think what the Lender has said about the commission arrangements is inaccurate. So, there's no reason for me to reach a different finding over those commission arrangements

### **Mrs H and Mr M's complaint about the Lender's affordability checks**

I've noted the PR's request for sight of income and expenditure documents completed at the Time of Sale. I explained in my provisional decision that these had not been provided by the Lender, and I proceeded with my consideration of this complaint on the basis the checks completed were not proportionate. I also explained that 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 Mrs H and Mr M was actually unaffordable before also concluding that they lost out as a result. But from the information provided, including the bank statements the PR supplied I am still not satisfied that the lending was unaffordable for Mrs H and Mr M for the reasons I explained in my provisional decision. I do not think it's necessary to provide this information to the PR as it came from Mrs H and Mr M.

## **Conclusion**

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After careful reconsideration of the facts and circumstances of this complaint, I adopt my provisional conclusions as part of my final decision. For the reasons I've given above and in my earlier correspondence I've mentioned, I don't think it is unfair that the Lender did not meet Mrs H and Mr M's Section 75 claim, and I'm not persuaded that it is fair and reasonable in all the circumstances to consider the complaint about an unfair relationship brought by Mrs H and Mr M against it. Having taken everything into account, I see no other reason why it would be fair or reasonable for me to direct the Lender to compensate Mrs H and Mr M.

### **My final decision**

For the reasons I have explained, I do not uphold Mrs H and Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr M to accept or reject my decision before 16 January 2026.

Michael Ball  
**Ombudsman**