DRN-5862580

The complaint

Mr C's and Mrs C's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

Background to the complaint

Mr C and Mrs C were the members of a timeshare provider (the 'Supplier') – having previously purchased a Trial Membership. 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 21 February 2019 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2,730 fractional points at a cost of £37,543 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr C and Mrs C more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr C and Mrs C paid for their Fractional Club membership, in part, by taking finance of £28,148 from the Lender (the 'Credit Agreement') after trading in their Trial Membership.

Mr C and Mrs C – using a professional representative – wrote to the Lender on 23 February 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr C's and Mrs C's concerns as a complaint and issued its final response letter on 15 February 2024, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service by a different professional representative (the 'PR'). It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mr C and Mrs C disagreed with the Investigator's assessment and asked for an Ombudsman's decision.

An ombudsman considered the matter and issued a provisional decision ('PD') on Mr C and Mrs C's complaint. An extract of that PD read as follows:

> ***"What I've provisionally 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.*
>
> *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

The CCA introduced a regime of connected lender liability under section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction.

But here, the cash price given to the membership was over £30,000, and so the Lender can't be responsible to answering a claim under section 75 of the CCA. However, I can consider these allegations when I decide whether there was an unfair relationship as defined by Section 140A. I will consider that provision further below, but my findings on the alleged misrepresentations are as follows.

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 C and Mrs C were:

1. *Told that they had purchased an investment that would "considerably appreciate in value" when that was not true.*
2. *Told that they would own a share in a property that would increase in value during the membership term when that was not true.*
3. *Made to believe that they would have access to "the holiday apartment" at any time all year round when that was not true.*
4. *Told them that they could sell the Fractional Club membership "back to the resort" or "easily sell it at a profit" when it wasn't true.*

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 that reason, I don't think it's probable. It's given little to none of the colour or context necessary to demonstrating that the Supplier made a false statement of existing fact and/or opinion. And as there isn't any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for that reason, I don't think it was.

It is also said in the Letter of Complaint that Mr C and Mrs C were told that they could sell the timeshare back to the resort or easily sell if at a profit. I find this allegation difficult to reconcile with the information provided at the Time of Sale. This was clearly set out in a one-page Member's Declaration that Mr C and Mrs C were given at the Time of Sale and which they signed.

One of the fifteen points specifically set out on that document was that the Supplier would not repurchase fractions, nor run a resale programme for members. However, I've not seen any explanation from Mr and Mrs C why they didn't question this with the Supplier at the time, given that they initialled next to this point.

With respect to the allegation that they would be able to sell the membership easily at a profit, Mr and Mrs C have not given any real description of what they were told about this or why they believed it to be true. When thinking about the inherent probabilities that such a statement was made, I have to take into account that it would have been easily verifiable had Mr C and Mrs C tried to resell their membership and not been able to do so (at a profit or at all). On balance I don't think such a statement was made.

So, while I recognise that Mr C and Mrs C and the PR have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

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

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

Having considered the entirety of the credit relationship between Mr C and Mrs C and the Lender 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 C and Mrs C and the Lender.

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

Mr C's and Mrs C's complaint about the Lender being party to an unfair credit relationship was made for several reasons.

The PR says, for instance, that the right checks weren't carried out before the Lender lent to Mr C and Mrs C. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr C and Mrs C was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for the Mr C and Mrs C.

Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr C and Mrs C knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for them, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mr C and Mrs C financial loss – such that I can say that the credit relationship in question was unfair on them as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate them, even if the loan wasn't arranged properly.

I acknowledge that Mr C and Mrs C may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase 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 their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr C and Mrs C 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 C's and Mrs C's credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR says the credit relationship with the Lender 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

The Lender does not dispute, and I am satisfied, that Mr C's and Mrs C'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 C and Mrs C 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 C and Mrs C 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 C and Mrs C 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 C and Mrs C, 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 C 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 the Lender and the Consumer 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 C and Mrs C and the Lender 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 C and Mrs C and the Lender 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.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when they decided to go ahead with their purchase.

To help me decide this point, I've carefully considered what Mr C and Mrs C have said in the course of their complaint about how the membership was sold to them and their motivation for taking it out.

I note that Mr C's and Mrs C's signed (but undated) witness statement – provided on 22 April 2024 – includes a summary of what happened on the day they purchased the Fractional Club membership.

Mr C and Mrs C say:

"Several times during the sales process we reiterated that we would be purchasing on an investment basis due to (Mr C'S) life limiting health condition and we were assured that this would be a good investment and show a good return and that (Mrs C) could liquidate this asset as and when required…

…We were also again assured that this was a good and sound investment given our circumstances".

That was the entirety of Mr C's and Mrs C's evidence on the issue. I appreciate that this was all that they could recall in their witness statement with regards to what was said about how their timeshare membership was presented as an investment.

The PR, in its response to the investigator's view, says that the above extracts demonstrate that the investment element of the Fractional Club membership was promoted to Mr C and Mrs C at the point of sale.

Whilst I acknowledge that the PR point to this as evidence that the Supplier promoted the investment element of membership (i.e. it breached Regulation 14 (3) of the Timeshare Regulations) I've already dealt with this point above when I concluded that I don't need to make a finding on this point. So, whilst this might be the case. I'm not persuaded that Mr C and Mrs C purchased membership due to any possible breach of the regulation.

Mr C and Mrs C purchased a Trial Membership from the Supplier in January 2017. Under that membership, they were entitled to try out a number of the Supplier's resorts over a set period. On 21 February 2019 they traded in their Trial Membership for the Fractional Club membership.

Given the two purchases, it seems clear to me that Mr C and Mrs C were interested in taking holidays with the Supplier. And that isn't surprising to me, given the nature of the products purchased. However, Mr C and Mrs C haven't mentioned the holidays they could take with the Supplier at all in their evidence, which makes me doubt how credible their evidence is.

Further, Mr C and Mrs C say that they were not informed of any cooling off period. However, attached to their Purchase Agreement was a one-page document titled "SEPARATE STANDARD WITHDRAWL FORM TO FACILIATE THE RIGHT OF WITHDRAWL". This was a form that Mr C and Mrs C could send back to the Supplier to withdraw from the Purchase Agreement, and it clearly states that they had 14 days to withdraw from the agreement. And I am satisfied that they received this as it has been signed separately by them. Further, I expect they would have taken notice of this document as it has been recorded that they exercised their right to withdraw from a timeshare agreement with the Supplier several years earlier. So, I simply do not find their evidence on this point persuasive or credible.

There are some comments from Mr C and Mrs C which suggest the investment features of the Fractional Club membership was a factor in their purchasing decisions in 2019. Although I note they don't mention the words 'profit' or 'gain', which I have in mind when thinking about what they meant by 'investment', I think it's appropriate to infer that is what they meant in their statement. .

I appreciate what they have said, however their witness statement is brief with no material detail on what they were told, or why it had an influence on them. In my view, their account is so brief that I can't put significant weight on it.

It has been said that the membership was purchased as an investment due to Mr C's health condition, but no explanation of what that means has been given – I don't understand why Mr C and Mrs C bought a timeshare as an investment due to Mr C's health. Further, they say they were told Mrs C could liquidate the membership when she needed the money. But that is not how the investment element of Fractional Club membership worked as it would only produce a return at the end of the membership term. Further, for the reasons set out above, do I think it likely they were told that they could easily sell it at any point before then. Finally, I'm unable to say why they thought they could 'profit' or whether that was something important to them in taking out the membership.

On the face of the evidence, and on balance, I'm not persuaded that they were sufficiently interested in the investment aspect of the Fractional Club that they wouldn't have pressed ahead with the purchase in its absence.

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 C and Mrs C 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 C and Mrs C 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 C's and Mrs C'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 C and Mrs C and the Lender 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 C and Mrs C 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 C and Mrs C 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 C and Mrs C 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 C and Mrs C 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."

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.

Since the PD was issued, the ombudsman who sent it can no longer issue a final decision on Mr C and Mrs C's complaint. So the complaint was passed to me to review it afresh. Having done so, I sent an email to both parties that read as follows:

> *"I am writing to you as [my colleague], the ombudsman who issued the provisional decision, is now not able to issue a final decision on this complaint, and so it has been passed to me.*
>
> *Having reviewed the file, I think [my colleague]'s provisional decision is reasonable and so I will now issue a further decision. But before I do so, I wanted to give both parties the opportunity to provide any further evidence or arguments. If you have anything further to provide, please do so by 12 December 2025.*
>
> *Following [my colleague]'s provisional decision, [the PR] responded to raise a concern about the amount of commission that may have been paid during this sale. Although it has not been raised previously, as it could give rise to an unfair credit relationship, I think it is something that I must consider. I have done so and wanted to provide my answer for further comment before I issue a further decision.*
>
> *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 C and Mrs C] in arguing that their credit relationship with the Lender 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 the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to [Mr C and Mrs C], 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 C and Mrs C] into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that the Lender 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 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 the Lender 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 C and Mrs C].

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that [Mr C and Mrs C] entered into wasn't high. At £1,407.40, it was only 5% of the amount borrowed and even less than that (4.6%) as a proportion of the charge for credit. So, had they known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, [Mr C and Mrs C] wanted Fractional Club membership and had no obvious means of their own to pay for it. And at such a low level, the impact of commission on the cost of the credit they needed for a timeshare they wanted doesn't strike me as disproportionate. So, I think they would still have taken out the loan to fund their purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of [Mr C and Mrs C] 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.

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

While I've found that [Mr C and Mrs C]'s credit relationship with the Lender 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 C and Mrs C]'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 the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling [Mr C and Mrs C] (i.e., secretly). And the second relates 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 them.

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed [Mr C and Mrs C] 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 the Lender 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 the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think they 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."

Neither party responded to the email that I sent, however I will now finalise my decision based on the representations received to my colleague's PD. For the avoidance of doubt, I adopt the findings my colleague reached in the earlier PD.

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 have 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 colleague's provisional findings, for broadly the same reasons.

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

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

The PR's further comments in response to the PD in the main relate to the issue of whether the credit relationship between Mr C and Mrs C and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr C and Mrs C as an investment at the Time of Sale. It has also now argued for the first time that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship.

As outlined in the PD, the PR originally raised various other points of complaint, all of which were addressed at that time. But it didn't make any further comments in relation to those in their response to the PD. Indeed, it hasn't said it disagrees with any of the 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 the conclusions in relation to them as set out in the 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 C and Mrs C 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 C and Mrs C 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 C and Mrs C as an investment and that this was a motivating factor in their purchasing decision.

It was accepted in the PD that the membership may well have been marketed as an investment to Mr C and Mrs C in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. It was 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 my colleague to make a finding on this as it is not determinative of the outcome of the complaint. It was 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 the PD hasn't changed my view of this, and so whether the Supplier's breach of Regulation 14(3) led Mr C and Mrs C to enter into the Purchase Agreement and the Credit Agreement remains an important consideration.

In the PD, my colleague explained the reasons why they didn't think any breach of Regulation 14(3) had led Mrs C and Mr C to proceed with their purchase. In short, my colleague was not persuaded that their decision was motivated by the prospect of a financial gain (i.e., a profit). In reaching that view, they took into account the testimony given by Mr C and Mrs Cin the course of their complaint and, as set out above, I have come to the same conclusion on the evidence before me. I recognise the PR has interpreted Mr C and Mrs C'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 taken in assessing this aspect of the complaint, believing that it has detracted from the judgment in *Shawbrook & BPF v FOS*[1] and the case law that contributed to it, by requiring Mr C and Mrs C to have been "primarily or mainly motivated" by the investment element in order to uphold the complaint. But my colleague did not make such a finding. They said that, in their view, Mr C and Mrs C were highly motivated by the holiday options offered by the Supplier – which was a factor in the 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). Again, I agree with the conclusions reached in the PD.

[1] R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS').

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

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

The PR says that a payment of commission from the Lender 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.

I explained to both parties my view on this issue in an email as set out in full above, but neither party has asked me to revisit what I said. Given that, I formally adopt the contents of that email into my findings. Overall, therefore, I'm not persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr C and Mrs C.

S140A 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 C and Mrs C 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.

Commission: The Alternative Grounds of Complaint

While I've found that Mr C and Mrs C's credit relationship with the Lender 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 C and Mrs C's complaint about an unfair credit relationship. I also dealt with these in my subsequent email to both parties and neither of them responded to what I said.

So, in conclusion, and for the reasons set out above, I do not think the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr C and Mrs C (i.e., secretly). And I do not think that the Lender's possible failings to follow the regulatory guidance in place at the Time of Sale, insofar as it was relevant to disclosing the commission arrangements between them, leads to Mr C and Mrs C's complaint being upheld.

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 C and Mrs C'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

I do not uphold Mr C and Mrs C's complaint against Shawbrook Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 28 January 2026.

Mark Hutchings
Ombudsman