DRN-5874137

The complaint

Mrs and Mr 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.

What happened

On 23 July 2018 (the 'Time of Sale'), Mrs and Mr C purchased membership of a timeshare (the 'Signature Collection) from a timeshare provider (the 'Supplier'). I've noted that, at the time of making the purchase, Mrs and Mr C were already existing timeshare members with the same Supplier of a product known as the 'Fractional Club'.

The Signature Collection membership, which is the subject of this complaint, had certain similarities to the existing Fractional Club which Mrs and Mr C had signed up to previously. For example, it was asset backed, which meant it gave them 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 ended. But, unlike the previous arrangement, the Signature Collection gave them a guaranteed week's accommodation in an Allocated Property.

They entered into an agreement with the Supplier to buy the Signature Collection membership at a cost of £15,460 + £31,070 (a trade in value of their existing membership). The total cost was therefore £46,530. As £25,758 remained outstanding on the existing loan they'd used to buy the Fractional Club membership, a credit agreement was entered into by Mrs and Mr C totalling £41,218[1]. This money was borrowed from the lender at a repayment rate of £476.29 per month over 180 months.

Mrs and Mr C – using a professional representative (the 'PR') – wrote to the Lender on 28 September 2022 (the 'Letter of Complaint') to raise a number of different concerns. The Lender said the complaint brought by the PR had all the hallmarks of a generic letter of complaint with specific points that had been raised many times before in other, unconnected complaints. It rejected the complaint on every ground.

The complaint was then referred to the Financial Ombudsman Service which is why it was eventually passed to me. I issued a provisional decision (PD) about this case in September 2025 in which I comprehensively set out my reasoning for not upholding the complaint. The PD invited the parties to respond with any further information or evidence they wanted to submit. Further to this, I issued a second communication (a 'side letter') to the parties on 22 December 2025 about commission. In this I said I wasn't 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 Mrs and Mr C.

[1] £46,530 - £5,312 Mrs and Mr C had already paid back on their previous loan. The credit agreement was therefore for £41,218 over 180 months @ 11.9 APR fixed. Total amount payable was £85,732.

I've had a response from Mrs and Mr C's PR which basically disagrees with my PD. I have read everything said on their behalf carefully. As I said before, 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. I have already set out in the PD the legal and regulatory context in which I'm making my decision about this case. For further information, I have also considered the following:

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.

Having done this, I am not upholding this complaint. This is my final decision.

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

Under the CCA, certain conditions must be met if the protection afforded to consumers is engaged, including the condition that the cash price of the purchase must exceed £100 but not exceed £30,000. So, if the purchase price of the product is in excess of £30,000, irrespective of the value of any trade-in, a claim under Section 75 cannot succeed.

As I've seen from all the various purchasing documents in this case which we've been sent, Mrs and Mr C's Signature Collection membership had a cash price of £46,530 and the Fractional Club had a trade-in cash price of £31,070. This means the cash price is greater than the upper limit covered by Section 75, as I've described above. The total amount of credit they borrowed on 23 July 2018 ('the credit agreement') was £41,218 and part of this was used to pay back the original lender which had lent Mrs and Mr C money to buy their Fractional Club membership. Given they entered into a credit agreement for £41,218 I am therefore satisfied that Mrs and Mr C's claim under Section 75 for misrepresentation cannot succeed for this reason.

I have taken into consideration that Section 75A of the CCA makes further provision for a creditor to be liable for *breaches of contract* by the Supplier in the event that certain conditions are met. In certain circumstances, for example, this can allow me to consider cases where the goods or service is over £30,000 and does not exceed £60,260. However, I

note that in this case, the PR's Letter of Complaint refers only to *misrepresentations* and not breaches of contract.

For these reasons, I find that the Lender acted fairly in not accepting Mrs and Mr C's claim under Section 75A of the CCA.

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

However, 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 Mrs and Mr 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 all 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, any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationship between Mrs and Mr C and the Lender.

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

Mrs and Mr 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 affordability checks weren't carried out before the Lender lent to Mrs and Mr 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 Mrs and Mr 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 for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mrs and Mr 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. But as of 2018, I can be sure of the fact that the Supplier (broker) was authorised and so my finding here is that this allegation is unfounded and without merit.

I acknowledge that Mrs and Mr C may have felt weary after a sales process which they say was pressured. But they haven't really explained what was actually said or done to make them feel a sense of pressure and that they had *no choice* but to buy something they didn't want. It seems to me that they were established timeshare members who wanted to upgrade to a new product. They would have likely experienced sales from the Supplier before this

sale but had still returned to upgrade on this occasion. With all of that being the case, there is insufficient evidence to demonstrate that Mrs and Mr C made the decision to purchase Signature Collection membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier. They also were 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, if they felt pressured into buying something they didn't want to buy.

Lastly, it was said in the Letter of Complaint that Mrs and Mr C were *"made to believe that* [they] *would have access to the holiday apartment at any time all around the year".* I understand this to mean they thought they would be able to stay at the Allocated Property whenever they wanted, which clearly was not the case here. But it might also mean that they thought availability of accommodation, more broadly, was guaranteed.

Given this complaint has been brought on Mrs and Mr C's behalf by a PR claims management company, it's unfortunate that this allegation isn't clear or backed by any narrative. However, like any holiday accommodation, availability was not unlimited particularly given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork Mrs and Mr C would have been given stated that the availability of holidays was subject to demand. Therefore, whilst I accept it's possible that Mrs and Mr C may not have been able to take certain holidays on certain occasions If that is what they mean), I have not seen enough to persuade me that this rendered their credit relationship with the Lender unfair.

Overall, therefore, I don't think that Mrs and Mr C's credit relationship with the Lender was rendered unfair 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. And that's the suggestion that membership was marketed and sold 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 Mrs and Mr C's membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling membership 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 Mrs and Mr C were told by the Supplier that Signature Collection 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 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 here as it offered Mrs and Mr 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 Signature Collection membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a

timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

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

To conclude, therefore, that the Signature Collection membership was marketed or sold to Mrs and Mr 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 as an investment, i.e. told them or led them to believe that membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

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

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Signature Collection as an 'investment' or quantifying to prospective purchasers, such as Mrs and Mr C, the financial value of the 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 Signature Collection membership as an investment. So, I accept that it's equally possible that Signature Collection membership was marketed and sold to Mrs and Mr 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. So, 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 Mrs and Mr 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 Mrs and Mr 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.

To help me decide this point, I have carefully considered what Mrs and Mr C said in the course of their complaint about how the membership was sold to them and their motivation for purchasing it. I have also considered what their PR has put forward on their behalf.

Within the 2022 Letter of Complaint, it is said that Mrs and Mr C were told that they had purchased an investment and could expect a return on this. But there was no further detail underpinning these statements within the Letter of Complaint, and I don't think these are

reflected or reinforced by Mrs and Mr C's own memories of the sale. The allegations from the PR say that Mrs and Mr C had been *"told that he* [sic] *had purchased an investment and that their timeshare would considerably appreciate in value";* elsewhere the letter broadly repeated that the timeshare's value would considerably increase.

I've read this in conjunction with Mr C's own 'client personal statement' he sent in to support the complaint. However, this was undated and unsigned (other than his name typed at the bottom) and so I have no way of knowing for sure when this was added. What I think I can be sure of is that it wasn't added until after August 2024. This is because the Lender's response about the complaint (in August 2024) specifically says there was no client statement attached or available. This would mean the statement was added after that time and so around six years after the events of this sale. The potential for inaccuracy or poor recollection is therefore high in these circumstances.

But in any event, it's also not entirely clear in his statement which sale Mr C is referring to when he outlines some of the problems he remembers. It's also notable that his statement is quite brief about what happened, and more so, he hasn't actually said the same things in his own statement, when compared with the very specific allegations made by the PR. In my view, for example, what the PR says about making a gain or profit and being told this was an investment go some way beyond what Mr C himself actually says. Mr C didn't quantify what he and Mrs C expected by way of any 'investment' and makes no specific allegations about the purchase being an investment as per my definition.

There are other specific allegations made by the PR in the Letter of Complaint which simply aren't mentioned at all by Mr C in his statement. In fact, I've now seen a great many of very similar timeshare complaints from this PR where the allegations are wide and laid out in an identical fashion.

Given these important differences between the Letter of Complaint and Mr C's own direct evidence, I think it's reasonable to then look at the broader context of what Mrs and Mr C say about the sale. In the personal statement, Mr C talks about several other aspects of their experience with the membership as a whole but he also makes several mentions of his and Mrs C's interest in holidays and their appreciation of the Signature Collection suite of accommodation(s), rather than purchasing for any investment-related reasons. Their ultimate reasoning for upgrading to the Signature Collection product was set out by Mr C who said, *"I decided to become a member because I enjoy travelling and liked the excellent facilities they had to offer".*

Further to this, I think it's relevant that by the time of this sale Mrs and Mr C could be fairly viewed as 'established' timeshare members with this same Supplier. They were trading-in several previously purchased 'high season' Fractions to buy the new Signature Collection product, and their existing holding was already a substantial one (the *c* £31,000 trade-in value supports this). What Mrs and Mr C were doing was trading-in their existing Fractional weeks for 'Week 51' in the Signature Collection - the week around the Christmas holiday period.

So, with all this history in mind I think their likely motivation behind the purchase is clear – supported as it is by Mr C's own statement about the Supplier's *"accommodations* [being] *very beautiful and comfortable though and that made us persist."* They were upgrading from one timeshare product to another – and one with certain enhanced features.

On my reading of *all* the evidence before me, the prospect of a financial gain from their membership was therefore *not* an important and motivating factor when they decided 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 Mrs and Mr C themselves do not persuade me that their purchase was motivated by their share in the Allocated Property *and* the possibility of a profit from this, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision Mrs and Mr C ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mrs and Mr C's decision to purchase membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). In my view, they would have still pressed ahead with the purchase, whether or not there had been a breach of Regulation 14(3).

For these reasons, I do not think the credit relationship between Mrs and Mr C and the Lender was unfair.

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

Mrs and Mr C say they were not given sufficient information by the Supplier about the ongoing costs of their 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 Mrs and Mr C sufficient information, in good time, on the various charges they could have been subject to as 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. So, as neither Mrs and Mr C, nor the PR, have persuaded me that they would not have pressed ahead with the purchase had the finer details of the 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 facts and circumstances. And because Mrs and Mr C were existing members timeshare at the time of this purchase, I think it was likely that they understood how the membership would operate more widely.

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 Mrs and Mr 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 their Signature Collection membership are likely to have led to an unfairness that warrants a remedy.

Commission

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 credit charge). 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 Mrs and Mr 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 Mrs and Mr 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 Mrs and Mr 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 as I've said above, the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. 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 Mrs and Mr 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 Mrs and Mr C entered into wasn't high. At £2,060.90, 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, Mrs and Mr C wanted Signature Collection 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 Mrs and Mr 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 Mrs and Mr C.

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 Mrs and Mr 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 this membership are likely to have led to an unfairness that warrants a remedy.

Commission: The Alternative Grounds of Complaint

While I've found that Mrs and Mr C credit relationship with the Lender wasn't unfair for reasons relating to the commission arrangements, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Mrs and Mr 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 Mrs and Mr 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 Mrs and Mr 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. 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 the purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Responses to my PD

I received a response to my PD but nothing regarding the later commission-related 'side letter'.

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 Mrs and Mr 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 Mrs and Mr 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.

I'm also satisfied that, where appropriate, I have applied the law and the various rules correctly. I previously told both parties in my PD about the overall legal and regulatory context that I think is relevant to this complaint. The PR now objects to the approach I've taken, believing that I have detracted from the judgment in *Shawbrook & BPF v FOS*[2] and the case law that contributed to it, by requiring Mrs and Mr C 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 basically said that, in my view, Mrs and Mr C were motivated by the holiday options offered by the Supplier – and this was a factor in my overall conclusion. In light of all the available evidence I said that they would, on balance, have pressed ahead with the purchase of the membership even if there had been a breach of Regulation 14(3). So, for the reasons I have already set out, I still do not think that any breach of Regulation 14(3), if indeed there was one, was material to Mrs and Mr C's decision to purchase this membership. The evidence is persuasive that they would have made the purchase, nonetheless.

Conclusion

I am very sorry to have to disappoint Mrs and Mr C. But as I have comprehensively explained, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim.

Also, I am not persuaded that the Lender was party to a credit relationship under the Credit Agreement that was unfair 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.

[2] *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').

My final decision

I do not uphold this complaint against Shawbrook Bank Limited.

I do not direct Shawbrook Bank Limited to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 17 February 2026.

Michael Campbell
Ombudsman