

The complaint

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

What happened

Mr and Mrs P were existing members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Signature Collection' – which they bought on 30 June 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2,600 fractional points at a cost of £23,579 (the 'Purchase Agreement').

Signature Collection membership was asset backed – which meant it gave Mr and Mrs P more than just holiday rights. It included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends. It also provided the guaranteed availability of their Allocated Property on the fixed weeks set out in their Purchase Agreement, or if they wished the points could be used to book other accommodation from the Supplier's portfolio of resorts.

Mr and Mrs P paid for their Signature Collection membership by taking finance of £23,579 from the Lender (the 'Credit Agreement').

Mr and Mrs P – using a professional representative (the 'PR') – wrote to the Lender on 25 January 2022 (the 'Letter of Complaint') to complain that the Lender had been party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.

The Letter of Complaint set out several reasons why Mr and Mrs P say that the credit relationship between them and the Lender was unfair to them. In summary, they include the following:

1. They were pressured into purchasing Signature Collection membership by the Supplier.
2. The Supplier's sales presentation at the Time of Sale included misleading actions and/or misleading omissions.
3. The decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness assessment.
4. The Supplier failed to provide sufficient information in relation to the Signature Collection's ongoing costs.
5. The Lender paid commission to the Supplier which was undisclosed to Mr and Mrs P.

The Lender dealt with Mr and Mrs P's concerns as a claim, which it did not accept.

The PR, on Mr and Mrs P's behalf, referred their complaint to the Financial Ombudsman

Service. When the Lender was informed of this referral it again considered Mr and Mrs P's concerns, dealing with them as a complaint, and issued its final response letter on 21 June 2022, rejecting it on every ground.

Mr and Mrs P were unhappy with this outcome and asked this Service to consider their complaint. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mr and Mrs P disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

My provisional decision

Having considered everything, I agreed that I didn't think the complaint ought to be upheld, but as I had expanded somewhat on the reasons given by the Investigator, I set out my initial thoughts on the merits of Mr and Mrs P's complaint in a provisional decision. In the PD 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.

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

Having considered the entirety of the credit relationship between Mr and Mrs P 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; and*
- 4. The inherent probabilities of the sale given its circumstances.*

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

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

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

The PR says, for instance that:

1. *The Signature Collection membership was an 'in perpetuity contract' with unlimited liability for management charges, and this was concealed at the point of purchase.*
2. *The right checks weren't carried out before the Lender lent to Mr and Mrs P; and*
3. *Mr and Mrs P were pressured by the Supplier into purchasing Signature Collection membership at the Time of Sale.*

However, as things currently stand, none of these strike me as a reason why this complaint should succeed.

I think this because it does appear that the Signature Collection membership had a set duration after which the Allocated Property will be sold as soon as possible. And I've not seen anything which makes me think that the Allocated Property would not be able to be sold at the conclusion of the contract period. The Terms and Conditions set out that the title to the property is held by independent trustees, the sale of the Allocated Property can only be carried out by the Trustees on or after the proposed sale date, and the Allocated Property cannot be removed from the trust before that sale date. What's more, the sale date can only be delayed by the unanimous written consent of all fractional owners, in which Mr and Mrs P are included. So I cannot see how the membership can have 'unlimited liability' for management charges, as these charges will cease once the property is sold.

I also haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's 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 and Mrs P 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 Mr and Mrs P.

And as regards the allegation of undue pressure, I acknowledge that Mr and Mrs P 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 Signature Collection 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 and Mrs P made the decision to purchase Signature Collection membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

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

The PR says that Mr and Mrs P were not given sufficient information at the Time of Sale by the Supplier in order to make an informed choice.

It isn't clear what information the PR thinks the Supplier failed to provide at the Time of Sale. But 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. So the extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

So, while I acknowledge that it is possible that the Supplier did not give Mr and Mrs P sufficient information, in good time, in order to satisfy the requirements of Regulation 12 of

the Timeshare Regulations¹ (which was concerned with the provision of 'key information'), even if that was the case, neither Mr and Mrs P nor the PR have persuaded me that they were deprived of information that would have led them to make a different purchasing decision at the Time of Sale. This was also one of several timeshare purchases that they had previously made from the Supplier, so I think it is a fair assumption to make that they were likely aware of how the memberships worked. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why they led to a financial loss.

Overall, therefore, I don't think that Mr and Mrs P'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, even though it was not set out in either the Letter of Complaint or in its referral to this Service, why the PR now says the credit relationship with the Lender was unfair to them. And that's the suggestion that Signature Collection 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

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs P 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 Signature Collection membership was marketed or sold to Mr and Mrs P 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 Signature Collection membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

And 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 Mr and Mrs P, 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.

But 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 Mr and Mrs P as an investment in breach

¹ The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010

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 (if there was one) had on the fairness of the credit relationship between Mr and Mrs P and the Lender under the Credit Agreement and related Purchase Agreement, because, as I've already set out, case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs P 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 Signature Collection membership was not an important and motivating factor when Mr and Mrs P decided to go ahead with their purchase. I am simply not persuaded that they bought the Signature Collection membership for the potential profit it offered. I'll explain.

The PR, on Mr and Mrs P's behalf, has submitted a statement written by Mrs P, setting out her and Mr P's recollections of their entire relationship with the Supplier. It sets out how they initially had a trial membership, and they traded this in towards their first 'fractional' membership in March 2012, and then an upgraded fractional membership in September 2012. As regards these fractional memberships, and the Time of Sale I am considering here, she said:

"In 2012, we were on holiday when we were invited to a meeting. Each time we went away, the reps would ask to speak with us and they would offer us something bigger and better. This time, they tried to get us to purchase a full membership. They told us that this would be an investment, after a certain time, we'd get our money back. They said that after 10-years, we could sell it on or keep it. They said if we kept it, it would automatically go to our daughter, which was made to sound like a good thing.

As such, on the 5th of March 2012, we purchased 1,028 points for £13,999, paid with a loan from [redacted] that the reps had organised for us.

Our next purchase was in September 2012, where we purchased fractional points. We were told that this would give us more options and better availability. Fractions were also supposed to be a better investment, as we were investing in a piece of property.

Therefore, on the 12th of September 2012, we purchased 1,932 fractional points for £12,547. We paid this by bank transfer.

In July 2015, we were convinced to buy 2-weeks holiday. This time, we were buying weeks in a signature suite. These apartments were much better, and we were told that only [Supplier] members would have access to them.

As such, on the 16th of July 2015, we purchased 2-weeks in a signature suite apartment for £23,579. This was paid with a Shawbrook bank loan that the reps organised for us."

I can see that Mrs P has set out, as regards their first two fractional purchases, that the Supplier told them that fractions were an investment as they were investing in a piece of property that could be sold. And as I've said, this is factually correct. But they have not said that this was their motivation to make either of the first two fractional purchases – other than describing what they were told, they've said nothing at all in this regard.

And likewise, they've said nothing at all about the investment element of the Signature Collection. When setting out what they were told they have said "the apartments were much better" and only members would have access to them. So I'm not persuaded that, as the PR has now attested, that the investment element was a motivation for them when they decided to make the purchase. And I find it hard to understand why this motivation was not mentioned in either the Letter of Complaint or the referral to this Service if it was important to Mr and Mrs P at the Time of Sale. It is simply not mentioned.

That doesn't mean they weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs P 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 (if there was one) was likely to have been material to the decision they 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 Mr and Mrs P's decision to purchase Signature Collection 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 for the quality and exclusivity of the holidays, whether or not there had been a breach of Regulation 14(3).

And for that reason, I do not think the credit relationship between Mr and Mrs P and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

Mr and Mrs P's Commission Complaint

*I note that one of Mr and Mrs P's other concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. The Supreme Court's recent judgment *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('Johnson, Wrench and Hopcraft') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer-credit brokers. So, once the implications of that judgment become clear, I will finalise my findings on this complaint.*

Conclusion

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 if I put the issue of commission to one side for the time being, I am not persuaded that the Lender was party to a credit relationship with Mr and Mrs P under the Credit Agreement that was 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.

But, as I've already said, once the implications of that judgment become clear, I will finalise my findings on this complaint."

Neither side had anything further to add following my PD.

My thoughts on the commission complaint

Then, I wrote to both sides with my initial thoughts on the complaint that an undisclosed payment of commission had been made by the Lender to the Supplier. I said:

"I am now in a position to set out my initial thoughts on this final aspect of Mr and Mrs [P]'s complaint, and invite both sides to submit any new evidence or arguments that they wish me to consider before I make my final decision.

Please ensure any reply is sent by 8 December 2025. If you need more time, then please let me know.

What I currently think – and why

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 ('Hopcraft, Johnson and Wrench').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

- 1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship...was unfair" (see paragraph 327);*
- 2. The failure to disclose the commission; and*
- 3. The concealment of the commercial tie between the car dealer and the lender.*

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

- 1. The size of the commission as a proportion of the charge for credit;*
- 2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);*
- 3. The characteristics of the consumer;*
- 4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and*
- 5. Compliance with the regulatory rules.*

From my reading of the Supreme Court's judgment in Hopcraft, Johnson and Wrench, it sets out principles which apply to credit brokers other than car dealer-credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, Hopcraft, Johnson and Wrench is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think Hopcraft, Johnson and Wrench assists Mr and Mrs [P] 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.

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

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 and Mrs [P], nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led Mr and Mrs [P] into a credit agreement that cost disproportionately more than it otherwise could have.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, no payment between the Lender and the Supplier, such as a commission, was payable when the Credit Agreement was arranged at the Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not currently persuaded that the commercial 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 and Mrs [P].

My provisional decision - commission

In conclusion, given the facts and circumstances of this complaint, I am not persuaded that the Lender was party to a credit relationship with Mr and Mrs [P] under the Credit Agreement and related Purchase 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."

Neither the PR (on Mr and Mrs P's behalf) nor the Lender had anything to add following this. As both sides have now responded, the complaint has come back to me for a final decision.

The legal and regulatory context

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

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that

being the case, it is not necessary to set it out here. But I would add that the following regulatory rules/guidance are also relevant:

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

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

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

The FCA's Principles

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

- Principle 6
- Principle 7
- Principle 8

What I've decided – and why

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

As neither side has submitted any new evidence or arguments, and having reconsidered everything afresh, I can see no reason to depart from my initial thoughts as set out in the PD, and those on commission that I set out separately.

I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with Mr and Mrs P under the Credit Agreement that was 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.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 2 January 2026.

Chris Riggs
Ombudsman