

The complaint

Ms G and Mrs H'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 claims under Section 75 of the CCA.

What happened

From the information available, Ms G and Mrs H were existing members of a timeshare with a third-party timeshare provider.

Then, Ms G and Mrs H purchased a new membership of a timeshare (the 'Fractional Membership') from a different timeshare provider (the 'Supplier') on 14 October 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy the right to occupy a named apartment during a set week each year (apartment 300 in week 43) at a cost of £10,843 (the 'Purchase Agreement')

Fractional Membership was asset backed – which meant it gave Ms G and Mrs H 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.

Ms G and Mrs H paid for their Fractional Membership by taking finance of £9,000 from the Lender (the 'Credit Agreement'). It is this purchase and the associated Credit Agreement that is the subject of this complaint.

Ms G and Mrs H went on to make a further purchase from the same Supplier in October 2015 which was again paid for by finance from the Lender. A complaint about this subsequent purchase and finance is being considered by myself separately.

Ms G and Mrs H – using a professional representative (the 'PR') – wrote to the Lender on 17 December 2019 (the 'Letter of Complaint') to raise a claim under Section 75 of the CCA and a complaint of an unfair credit relationship under Section 140A of the CCA. In summary, it said:

- Commission was paid to the Supplier by the Lender which was not declared to Ms G and Mrs H.
- No proper affordability assessment was carried out before the lending was agreed.
- Ms G and Mrs H were put under undue pressure to enter the Purchase Agreement and Credit Agreement.
- The Fractional Membership was misrepresented.
- The Supplier used aggressive commercial practices.

The Lender dealt with Ms G and Mrs H's concerns as a complaint and issued its final response letter on 28 January 2020, rejecting it on every ground.

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

Ms G and Mrs H disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. In addition, the PR said that Ms G and Mrs H's Fractional Membership had been sold and/or marketed by the Supplier as an investment in breach of Regulation 14(3) of the 'Timeshare Regulations'¹, and this breach, being material to their purchasing decision, rendered their credit relationship with the Lender unfair to them under Section 140A of the CCA.

The provisional decision

Having considered everything that had been submitted, I didn't think Ms G and Mrs H's complaint ought to be upheld. I sent to both sides my initial thoughts on the merits of their complaint in a provisional decision (the 'PD') and invited them to submit any new evidence and arguments that they wished me to consider. 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 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. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

A material and actionable misrepresentation is an untrue statement of existing fact, made by the Supplier, that induces a consumer into entering a contract. So, in Ms G and Mrs H's case, for me to say there had been a pre-contractual misrepresentation by the Supplier, I would have to be satisfied, on the balance of probabilities, that they were told something that was factually untrue, and that this induced them to make the purchase at the Time of Sale.

It is not entirely clear from the Letter of Complaint what misrepresentations were allegedly made by the Supplier at the Time of Sale, and there is nothing that has been submitted by either party that assists me in this regard. So, I am not persuaded that Ms G and Mrs H were told anything that was factually untrue.

While I recognise that Ms G and Mrs H and the PR have concerns about the way in which

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

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

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

It has been suggested in the Letter of Complaint that Ms G and Mrs H could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays for instance. Some of the sales paperwork likely to have been signed by Ms G and Mrs H states that the availability of holidays was/is subject to demand. So, while I accept that they may not have been able to take certain holidays, I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

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

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 Membership was actionably misrepresented by the Supplier at the Time of Sale, or that the contract was breached. 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 Ms G and Mrs H 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 Ms G and Mrs H and the Lender.

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

Ms G and Mrs H'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 right checks weren't carried out before the Lender lent to Ms G and Mrs H; and
2. Ms G and Mrs H were pressured by the Supplier into purchasing Fractional Membership at the Time of Sale.

However, as things currently stand, neither of these strike me as a reason why this complaint should succeed.

I 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 Ms G and Mrs H 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 Ms G and Mrs H.

I'm required to take into account, when appropriate, what I consider was good industry practice at the time – which, in this complaint, is the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code'). The RDO Code sets out, amongst other things, the Sales and Marketing Principles.

It states that selling Members will ensure:

- 2.2.1 Appropriate marketing techniques that make it clear what the object of the approach to the consumer is;
- 2.2.2 Appropriate selling methods that treat the consumer with respect and allow the consumer choice between purchasing and reflection; and
- 2.2.3 The provision of any necessary assistance to consumers to enable them to make an informed decision.

Similarly, the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUTR') make clear that a commercial practice that significantly impaired a consumer's freedom of choice and caused them to buy something they otherwise wouldn't have done, could amount to an aggressive commercial practice. That is, in my view, something that could lead to an unfair debtor-creditor relationship.

I have considered what has been said in the Letter of Complaint, but I've not seen sufficient evidence which leads me to think, on the balance of probability, that Principles 2.2.2 of the RDO Code or the CPUTRs were breached for reasons relating to pressure. I acknowledge that Ms G and Mrs H may have felt weary after a sales process that went on for a long time. But they say nothing 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 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 Ms G and Mrs H made the decision to purchase Fractional Membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Ms G and Mrs H'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 now says the credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Membership was marketed and sold to Ms G and Mrs H as an investment in breach of the 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 Ms G and Mrs H 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 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 Membership was marketed or sold to Ms G and Mrs H 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 Membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

But I am not persuaded that the way the membership was sold to Ms G and Mrs H was in breach of the relevant prohibition.

There is nothing in the Letter of Complaint to the Lender that says or suggests that the membership was sold in this way, nor was that alleged to this Service when the complaint was referred here. And there is no first-hand testimony from Ms G and Mrs H to say this either. It was only after the Investigator sent their opinion on the outcome of the complaint that the PR said that the Supplier had breached Regulation 14(3) of the Timeshare Regulations. But as I've said, there is no evidence to support that.

So, from what I can see, I am not currently satisfied that the Fractional Membership was sold and/or marketed to Ms G and Mrs H in a way that breached Regulation 14(3) of the Timeshare Regulations. But even if I am wrong about that, and the sale did breach the relevant prohibition, I don't think it would change the outcome of this complaint. I'll explain.

Would the credit relationship between the Lender and Ms G and Mrs H have been rendered unfair to them had there been a breach of Regulation 14(3) of the Timeshare Regulations?

As I've said, I am not currently persuaded that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale. But if I am wrong about that, and the Supplier did breach the relevant prohibition, I would need to consider what impact that breach (if there was one) had on the fairness of the credit relationship between Ms G and Mrs H and the Lender under the Credit Agreement and related Purchase Agreement. This is because 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 Ms G and Mrs H 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, I am simply not persuaded that the prospect of a financial gain from Fractional Membership was an important and motivating factor when Ms G and Mrs H decided to go ahead with their purchase. As I've said above, there is no evidence which suggests this was the case. This particular allegation has been made late in the day, and is unsupported. There is no direct testimony from either Ms G or Mrs H which suggests why they bought the Fractional Membership when they did, so on the balance of probabilities, I think the reason was most likely the holidays that it could provide. The membership did, after all, provide a guaranteed week's accommodation in a named property for the duration of the membership.

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 neither Ms G and Mrs H or the evidence submitted persuades me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, even if there was a breach of Regulation 14(3) by the Supplier (and as I've said, I don't think there was) I don't think this would have been material to the decision they ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Ms G and Mrs H's decision to purchase Fractional 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 Ms G and Mrs H 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 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.

*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 Ms G and Mrs H 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 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 Ms G and Mrs H 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 Ms G and Mrs H, 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 Ms G and Mrs H 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 Ms G and Mrs H.

Section 140A: Conclusion

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Ms G and Mrs H and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

Overall 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 Ms G and Mrs H Section 75 claims and I am not persuaded that the Lender was party to a credit relationship with them 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 Ms G and Mrs H."

Neither the Lender nor the PR on Ms G and Mrs H's behalf had anything further to add in response to the PD. As the deadline for responses has now passed, the complaint has come back to me for further consideration.

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 reconsidered everything, and because neither side has submitted any new evidence or argument in response to my provisional decision, I see no reason to depart from my provisional findings as set out above.

For all of the reasons above, I do not think that the Lender acted unfairly or unreasonably when it dealt with Ms G and Mrs H Section 75 claims and I am not persuaded that the Lender was party to a credit relationship with them 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 Ms G and Mrs H.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G and Mrs H to accept or reject my decision before 8 January 2026.

Chris Riggs
Ombudsman