DRN-6015688

The complaint

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 her 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

Mrs H and Mr S were members of a timeshare provider (the 'Supplier') – having previously purchased a product from it. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they upgraded on 19 February 2014 (the 'Time of Sale'). After trading in their previous membership, they paid £5,062 for 1,220 fractional points (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mrs H and Mr S 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 the end of their membership term.

Mrs H and Mr S paid for their Fractional Club upgrade by taking finance of £19,595 from the Lender in Mrs H's name (the 'Credit Agreement'). The amount borrowed exceeded the purchase price as Mrs H and Mr S consolidated the finance taken to fund their previous membership into this loan.

As the finance used for the purchase at the Time of Sale was in Mrs H's sole name, only she is eligible to bring this complaint. Hereafter, I will only refer to Mrs H unless it's important to differentiate between her and Mr S.

Mrs H – using a professional representative (the 'PR') – wrote to the Lender on 11 October 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 Mrs H's concerns as a complaint and issued its final response letter on 28 March 2024, 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.

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

I considered the matter and issued a provisional decision (the 'PD') dated 30 October 2025. In that decision, I said:

> "I have considered all the available evidence and arguments to decide what is 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

This part of Mrs H's complaint was made for several reasons, which included that the Supplier misrepresented the Fractional Club upgrade at the Time of Sale as it told her she had purchased an investment which would considerably increase in value and that she would have access to the Allocated Property at any time.

Generally, creditors can reasonably reject Section 75 claims that they are first made aware of after the claim has become time barred under the Limitation Act (the 'LA'), as it wouldn't be fair to expect them to look into such claims so long after the liability arose, and after a limitation defence would have been available in court. Therefore, it's relevant to consider whether Mrs H's Section 75 claim was time barred under the LA before she put it to the Lender.

A claim under Section 75 is a "like claim" against the creditor. It in effect mirrors the claim a consumer could make against the Supplier.

A claim for misrepresentation against the Supplier would typically be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued (see Section 2 of the LA).

However, a claim under Section 75, like the one in question here, is also "an action to recover any sum by virtue of any enactment" under Section 9 of the LA. The limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was the Time of Sale. That's when Mrs H entered into the purchase of her timeshare upgrade based on the alleged misrepresentations of the Supplier – which she says she relied on. Further, as the loan from the Lender was used to help finance the purchase, it was when she entered into the Credit Agreement that she suffered a loss.

Mrs H first notified the Lender of her Section 75 claim on 11 October 2022. Given more than six years had passed between the Time of Sale and when she first put her claim to the Lender, in my view it was neither unfair nor unreasonable that the Lender rejected her concerns about the Supplier's alleged misrepresentations.

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

I've already explained why I don't think the Lender acted unfairly or unreasonably when it rejected Mrs H's Section 75 claim in respect of the Supplier's alleged misrepresentations 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 Mrs H and the Lender along with all 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 Mrs H and the Lender.

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

Mrs H'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 Mrs H. 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 her was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship with the Lender was unfair to her for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for her.

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 Mrs H knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for the Fractional Club upgrade. And as the lending doesn't look like it was unaffordable for her, 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 her experiencing a financial loss – such that I can say that the credit relationship in question was unfair on her 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 her, even if the loan wasn't arranged properly.

The PR also says that there were one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Mrs H in practice, nor that any such terms led her to behave in a certain way to her detriment, 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.

I acknowledge that Mrs H may have felt weary after a sales process that went on for

a long time. But she says little about what was said and/or done by the Supplier during her sales presentation that made her feel as if she had no choice but to purchase the Fractional Club upgrade when she simply did not want to. She was also given a 14-day cooling off period and has not provided a credible explanation for why she did not cancel her membership during that time. And with all that being the case, there is insufficient evidence to demonstrate that Mrs H made the decision to purchase the Fractional Club upgrade because her ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mrs H's credit relationship with the Lender was rendered unfair to her 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 her. And that's the suggestion that Fractional Club membership was marketed and sold to her as an investment in breach of a 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 H's Fractional Club upgrade 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 the Fractional Club upgrade 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 H was told by the Supplier that the Fractional Club upgrade 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 Mrs H the prospect of a financial return – whether or not, like all investments, that was more than what she first put into it. But it is important to note at this stage that the fact that the Fractional Club upgrade 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 the Fractional Club upgrade was marketed or sold to 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 the upgrade to her as an investment, i.e. told her or led her to believe that the Fractional Club upgrade

offered her 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 the Fractional Club upgrade 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's 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 Mrs H, the financial value of their share in the net sales proceeds of their allocated property along with the investment considerations, risks and rewards attached to it.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned the Fractional Club upgrade as an investment. So, I accept that it's also possible that the Fractional Club upgrade was marketed and sold to Mrs H 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 Mrs H 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 H 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 H and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her 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 the Fractional Club upgrade was not an important and motivating factor when Mrs H decided to go ahead with her purchase.

The PR has provided a statement from Mrs H containing her recollections of her various interactions with the Supplier. In respect of the Time of Sale, this says:

> "We subsequently booked one of our two free holidays to [a destination] and went in February 2014. There were lots of [Supplier] reps in the resort and a review meeting was arranged for us to check in whilst we were there. Again, our accommodation was superb. We had a 3 bedroom apartment with a jacuzzi on the balcony and it was really 1st class.
>
> We were then invited to a meeting and this really was to encourage us to

> purchase more fractional rights as that would enable us to enjoy more choice; better accommodation and overall enhance our experience. The experience was similar to the first time, but we signed up within a few hours as for ca £5000 further investment we were promised so much more."

The extract of the statement I have quoted above does not indicate that the motivation for Mrs H's purchase was the investment element of the Fractional Club upgrade. Rather, it seems that Mrs H was impressed with the standard of accommodation on offer and was told upgrading would further enhance her experience by improving this and providing more holiday options.

I acknowledge that Mrs H says her experience at the Time of Sale was similar to when she first purchased Fractional Club membership from the Supplier. But this is all Mrs H says about the investment aspect of Fractional Club membership when describing that earlier sale:

> "We were told our family could use the timeshare; that we could sell it back at any time; that we wouldn't lose and money and in fact our investment would grow; that we could have luxury accommodation for our investment and what was stopping us taking up this wonderful once in a lifetime deal."

But this seems to simply be a description of what Mrs H was told by the relevant sales representative(s). Although Mrs H says she was told her "investment would grow", she does explain why this motivated her to proceed.

Later in the statement, in a section headed "misrepresentation issues", Mrs H says the following:

> "We believe that the sale of our various timeshare products were subject to misrepresentation for the following reasons:-
>
> […]
>
> - We were informed that the purchase price for our timeshare fractional ownership products would be an investment which would see a profit when the properties were sold. We were told that Spanish house prices had fluctuated over the last few years but generally they performed similar to the UK, doubling every 8-10 years. We were led to believe that we owned a fraction of the apartment, similar to a leasehold flat, which had a monetary resale value that could be recouped at the end of the term; we now understand that this timeshare has little or no value and is unlikely to be sold with repayment of our purchase price and profits as expected."

Similarly, while Mrs H does refer to the investment element of Fractional Club membership in this section when setting out why the products she was sold were misrepresented to her by the Supplier, she does not describe her share in the Allocated Property as a driving factor for her purchase at the Time of Sale.

And in the same section, Mrs H says:

> - "We only ever wanted to receive good value, high quality accommodation for our holidays […]"

> Having carefully considered Mrs H's statement in the round, it seems to me that the motivation behind her purchase at the Time of Sale was holiday based, rather than the investment aspect of Fractional Club membership.
>
> That doesn't mean she wasn'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 H doesn't persuade me that her purchase was motivated by her 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 she ultimately made.
>
> On balance, therefore, even if the Supplier had marketed or sold the Fractional Club upgrade as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mrs H's decision to purchase this 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 she would have pressed ahead with her 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 Mrs H and the Lender was unfair to her even if the Supplier had breached Regulation 14(3)."

In conclusion, given the facts and circumstances of this complaint, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mrs H's Section 75 claim, and I was not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement that was unfair to her for the purposes of Section 140A of the CCA. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct the Lender to compensate her.

The PR responded that it did not accept the PD and provided some further comments and evidence to be considered. The Lender accepted the PD and had no further comments.

I am now in a position to finalise my decision.

The legal and regulatory context

In my PD, I explained that 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 was not necessary to set out that context in detail. But, following my PD, I would add that the following regulatory rules/guidance are also relevant:

<u>The Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010</u>

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

<u>The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011</u>

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

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.

I've considered the case afresh following the response from the PR. Having done so, I've reached the same decision as that which I outlined in my 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 only relate to the issue of whether the credit relationship between Mrs H and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to her as an investment at the Time of Sale. It's now also argued for the first time that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship.

As I outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But it didn't make any further comments in relation to those in its response to my PD. Indeed, it hasn't said it disagrees with any of my provisional conclusions about those other points. And since I haven't been provided with anything more in respect of those other points by either party, I see no reason to change my conclusions about them as set out in my 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 Supplier's alleged breach of Regulation 14(3) of the Timeshare regulations

As I explained in my PD, Mrs H's statement indicates that the motivation behind her purchase at the Time of Sale was holiday based, rather than the investment aspect of Fractional Club membership. The PR hasn't said anything that changes my view of her motivation in response to my PD. So, I was not, and still am not, persuaded that the evidence suggests that she purchased the Fractional Club upgrade because of any breach of Regulation 14(3).

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my PD, the Timeshare Regulations did not ban products such as the Fractional

Club. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances.

So, even if the Supplier had marketed or sold the upgrade as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mrs H's decision to make the purchase was motivated by the prospect of a financial gain. And for that reason, I still don't think the credit relationship between Mrs H and the Lender was unfair to her.

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 FCA's Dispute Resolution rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mrs H in arguing that her credit relationship with the Lender was unfair to her 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 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 her 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 before, 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 think any such failure is itself a reason to find the credit relationship in question unfair to Mrs H.

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 H entered into wasn't high. At £1,959.50 it was only 10% of the amount borrowed and even less than that (5.5%) as a proportion of the charge for credit. So, had Mrs H 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 persuaded that she either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mrs H wanted the Fractional Club upgrade and had no obvious means of her own to pay for it. And at such a low level, the impact of commission on the cost of the credit she needed for a timeshare she wanted doesn't strike me as disproportionate. So, I think she 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 H but as the supplier of contractual rights she 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 her when arranging the Credit Agreement and thus a fiduciary duty.

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 Mrs H.

S140A conclusion

Given all 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 Mrs H and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her. 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 Mrs H's credit relationship with the Lender wasn't unfair to her 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 her 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 H (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 H 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 her. 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 she would still have taken out the loan to fund her purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

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 Mrs H's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement that was unfair to her 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 her.

My final decision

My final decision is to not uphold Mrs H's complaint about Shawbrook Bank Limited for the reasons provided.

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

Alex Salton
Ombudsman