DRN-6042752

## The complaint

Ms M and Mr M complain Shawbrook Bank Limited (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with them under Section 140A of the CCA.

Ms M and Mr M are represented in their complaint by a professional representative ("PR").

## What happened

I issued a provisional decision on Ms M and Mr M's complaint on 17 September 2025, in which I set out the background to the case and my provisional findings on it. A copy of that provisional decision is appended to, and forms a part of, this final decision, so it's not necessary to go over the details again. However, in very brief summary:

- Ms M and Mr M bought a timeshare from a timeshare provider (the "Supplier") on 28 October 2015 (the "Time of Sale"), for £16,585. This was financed by a loan of the same amount from the Lender (the "Credit Agreement").

- The timeshare was a type of asset-backed timeshare which entitled Ms M and Mr M to more than holiday rights. It also entitled them to a share in the proceeds of a property named on their purchase agreement (the "Allocated Property") after their contract came to an end.

- Ms M and Mr M complained in January 2022, via a professional representative ("PR"), to the Lender about a number of concerns which included misrepresentations by the Supplier giving them a claim against the Lender under Section 75 of the CCA, and matters giving rise to an unfair credit relationship between them and the Lender.

- The Lender failed to respond to the complaint and it was then referred to the Financial Ombudsman Service for an independent assessment.

In my provisional decision I said I didn't think the complaint should be upheld. Again, my full findings can be found in the appended provisional decision, but in very brief summary:

- It would not have been fair and reasonable to expect the Lender to honour Ms M and Mr M's Section 75 claim for misrepresentation, because that claim was time-barred by the Limitation Act 1980 on account of how long after the events in question it had been brought. However, I noted that the allegations of misrepresentation could be considered as relevant factors when assessing the fairness of Ms M and Mr M's credit relationship with the Lender.

- The Lender had not participated in a credit relationship with Ms M and Mr M that was unfair to them because:

    - Some of the misrepresentations they'd alleged were in fact true statements or statements of opinion which there was no evidence to demonstrate were not honestly held.

- The remaining alleged misrepresentations were too vague and lacking in colour and context to be able to draw a positive conclusion that the Supplier had made false statements of specific fact to Ms M and Mr M.

- Regardless of whether the Lender had carried out appropriate checks before lending to Ms M and Mr M, there was a lack of evidence the loan had been unaffordable for them at the time.

- The Credit Agreement had not been arranged by an unauthorised credit broker. The entity which had arranged the Credit Agreement had had the required authorisations from the regulator at the relevant time.

- There was insufficient persuasive evidence that Ms M and Mr M had only signed up for the timeshare because their ability to make a choice had been significantly impaired by pressure from the Supplier.

- While unfair terms within the Purchase Agreement had been referred to by PR, I couldn't see that these terms had been operated in an unfair way with respect to Ms M and Mr M, or would likely be in the future.

- It was possible the Supplier had breached Regulation 14(3) of the Timeshare Regulations by marketing the timeshare to Ms M and Mr M as an investment, but I thought the possibility of the product being an investment had not played a material part in their decision-making process when they decided to make their purchase.

I invited the parties to the complaint to respond to my provisional decision. The Lender accepted the provisional decision. PR didn't agree with the provisional decision, and asked me to consider various additional points relating to the alleged sale of the timeshare as an investment, but also relating to the alleged non-disclosure of a commission paid by the Lender to the Supplier for arranging the Credit Agreement. The case has now been returned to me to decide.

**The legal and regulatory context**

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

The legal and regulatory context that I think is relevant to this complaint is, in many ways. no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

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

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

- CONC 3.7.3R
- CONC 4.5.3R
- CONC 4.5.2G

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.

Following the responses from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my 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.

PR's comments in response to the provisional decision relate only to the issue of whether the credit relationship between Ms M and Mr M and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to Ms M and Mr M as an investment at the Time of Sale, and the impact of this on their purchasing decision. It has also now argued for the first time that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship.

As outlined in my provisional decision, 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 provisional decision. Indeed, it hasn't said it disagrees with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my provisional decision. So, I'll focus here on 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

PR says it disagrees with my assessment of Ms M and Mr M's witness statement. I could summarise its arguments as follows:

- Ms M and Mr M's witness statement could be relied on. Studies had shown high pressure sales would tend to lead to someone having vivid recollections of what happened during that process, for a variety of reasons.

- The fact that Ms M and Mr M had been interested in holidays didn't preclude them from also having, as a motivating and material factor in their purchasing decision, the prospect of the Fractional Club product being an investment. Investment didn't need to be the main motivation, for a breach of Regulation 14(3) to lead to an unfair credit relationship. Ms M and Mr M had mentioned the potential gains from selling the Allocated Property in their witness statement, and this was enough.

- More broadly, it considered that fractional timeshares were routinely sold as investments, and that for a person buying a fraction of a property there would be a general expectation on their part that it would go up in value.

It may well be the case that Ms M and Mr M's witness statement contains their vivid recollections, and I didn't question the authenticity of what they'd said (albeit I did note they had been asked to recall events many years after they'd happened). What I had difficulty with, and still have difficulty with, is finding that they were materially motivated to purchase the timeshare because they thought it was an investment. I accept PR's point that an investment motivation does not need to be the only or even the main factor in a person's decision. But it does need to be material. Based on the way Ms M and Mr M write about it in their witness statement, I don't think it was, nor am I convinced that they understood the product as something which could lead to a financial gain or profit. They don't refer to the product as an investment, nor do they describe it in a way which suggests they were told or understood they may make a financial gain from it. They only say they were told that, at the end of the term, the property would be sold and they'd get a "kickback", and that the Supplier's representatives had shown how this would work out cheaper than paying for an all-inclusive family holiday each year.

To me, it sounds like Ms M and Mr M understood they would get some money back at the end of their membership, meaning overall the holidays they'd taken over the course of their membership would work out cheaper. I don't think that is an understanding that the product was an investment, in the sense it could or would result in a profit or financial gain being made.

Regarding PR's more general points about how the Supplier sold timeshares, it may be the case that the Supplier sometimes or often crossed the line into marketing fractional timeshares as investments in breach of Regulation 14(3), but without enough evidence that Ms M and Mr M's purchase was materially motivated by the prospect of their Fractional Club membership being an investment in the sense of something that they hoped or expected to make them a financial gain or profit, then I'm unable to say that any breach by the Supplier of Regulation 14(3) led to a credit relationship with Ms M and Mr M that was unfair to them.

<u>The provision of information by the Supplier at the Time of Sale</u>

PR now 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 M and Mr M 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 Ms M and Mr M, 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 M and Mr M, 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 them into a credit agreement that cost disproportionately more than it otherwise could have.

What's more, in 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 M and Mr M.

**S140A conclusion**

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Ms M and Mr M and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

**My final decision**

For the reasons explained above, and in the appended provisional decision, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M and Mr M to accept or reject my decision before 20 January 2026.

Will Culley
**Ombudsman**

## COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at the same general conclusions as our Investigator, but I've set out some of my findings in more detail and have decided to issue this provisional decision to give the parties an opportunity to supply further information.

The deadline for both parties to provide any further comments or evidence for me to consider is **1 October 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from Ms M and Mr M, or if they tell me they accept my provisional decision, I may arrange for the complaint to be closed as resolved without a final decision.

### The complaint

Mr and Mrs M'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.

Mr and Mrs M are represented in their complaint by a professional representative ("PR").

### What happened

This complaint relates to a timeshare purchase made by Mr and Mrs M from a timeshare provider (the "Supplier") on 28 October 2015. I've outlined the basic details of the background below:

- The purchase made on 28 October 2015 was of a membership in the Supplier's "Fractional Club". Mr and Mrs M purchased 1,040 points in the Fractional Club, which could be used in exchange for holiday accommodation annually. This type of timeshare was also asset-backed, which meant it included a share in the future sale proceeds of a specific timeshare apartment named on the purchase paperwork. The total price of the membership was £16,585.

- The Supplier arranged a loan (the "Credit Agreement") with the Lender for £16,585 to cover the cost of the membership, to be repaid over a period of 180 months. The loan was still in repayment as of early 2024.

- In January 2022, through PR, Mr and Mrs M complained to the Lender, seeking to find it responsible for the Supplier having mis-sold the timeshare and associated loan. The individual mis-selling concerns raised by PR can be found in the table below, but broadly-speaking they included misrepresentations for which Mr and Mrs M sought to hold the Lender liable under Section 75 of the CCA, and matters which were alleged to have rendered the credit relationship between them and the Lender unfair to them under Section 140A of the CCA.

The Lender failed to respond to the complaint in a timely fashion, which 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.

Mr and Mrs M disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. At this point PR also provided a witness statement, said to have been taken from Mr and Mrs M in early 2021, to support their case.

**What I've provisionally decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having done that, I do not think this complaint should be upheld.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

I think it's also important at this stage to outline the general grounds on which Mr and Mrs M seek redress from the Lender in relation to what are, at least in part, the *Supplier's* alleged wrongdoings as opposed to the Lender's. The grounds are that Mr and Mrs M have a claim under Section 75 of the CCA, and Section 140A of the CCA.

Section 75 of the CCA gives a person who has purchased goods or services with certain kinds of credit, a right to claim against their lender in respect of any breach of contract or misrepresentation on the part of the supplier of those goods or services. This is subject to certain technical conditions being met.

As a general rule, I think it's reasonable for creditors to reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Ac 1980 ("LA"), as it would be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would have been available in court. So it is relevant to consider whether Mr and Mrs M's Section 75 claim was time-barred *before* PR put the claim to the Lender on their behalf.

A claim against a lender under Section 75 is a "like claim". This means it mirrors the claim Mr and Mrs M could have made against the Supplier.

Mr and Mrs M's claim, so far as Section 75 is concerned, is limited to misrepresentation. A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. The limitation period to make such a claim expires six years from the date on which the cause of action accrued. In claims for misrepresentation, the cause of action accrues when a loss is incurred. In Mr and Mrs M's case, that's when they entered the agreement to purchase the timeshare, and the related Credit Agreement, on 28 October 2015.

PR first contacted the Lender about Mr and Mrs M's claim in January 2022, more than six years after the cause of action accrued. So I don't think it was unfair or unreasonable of the Lender to fail to honour their Section 75 claim.

That said, the misrepresentations Mr and Mrs M complain about are also matters which could have rendered the credit relationship between them and the Lender unfair to them, and so I have looked into these allegations further below.

Section 140A of the CCA operates in a more complex manner than Section 75. Insofar as is relevant to Mr and Mrs M's case, it means that the credit relationship between them and the Lender can be found unfair because of anything done (or not done) by, or on behalf of, the Lender.

An unfair credit relationship can also be based on the terms of a related agreement (such as the agreement to buy the timeshare) and, when combined with Section 56 of the CCA, on anything done or not done by the Supplier on the Lender's behalf before the making of the timeshare or loan agreements. The Supplier's acts or omissions during the process of negotiations leading up to the purchase are deemed to be the Lender's responsibility.

In the interests of efficiency and ease of reading, I have set out my findings in a table format. Where a particular finding requires further explanation or analysis, I have indicated this and provided the further explanation below the table.

**Table of Findings**

| **Section 140A - Misrepresentations** | **Reason why this complaint doesn't succeed** |
|---|---|
| It was falsely represented that the product was an investment that would "considerably appreciate in value". | There's insufficient evidence this was said. If it was said, it would not be untrue to describe the product as an investment as it contained investment features. Any statements regarding future value are likely to have been statements of honest opinion in the absence of evidence to indicate otherwise. |
| It was falsely represented that there would be a considerable return on investment because it involved a share in a property that would increase in value. | As per the point above, there is insufficient evidence these representations were made. If they were, there's insufficient evidence they were anything other than statements of honest opinion. |
| It was falsely represented that the Fractional Club membership could be sold back to the Supplier or easily to third parties at a profit. | There's very little colour or context to this allegation, meaning it's difficult to conclude the Supplier represented this to be the case. |
| It was falsely represented that Mr and Mrs M would have access to "the holiday apartment" at any time all year round. | This is a vague allegation which also lacks sufficient detail, context or colour to demonstrate the Supplier made such statements, or whether any statements made were untrue. |
| **Section 140A - Other Matters** | **Reason why this complaint doesn't succeed** |
| Mr and Mrs M were pressured into making the purchase. | While Mr and Mrs M recalled a pressured sales process, it's not clear why they felt they had *no choice* but to purchase. They also did not use their cooling-off period to cancel the purchase, which I would have expected had they only purchased because they were pressured into doing so. |
| The Lender failed to carry out the creditworthiness/affordability checks required by industry guidance or regulations. | Mr and Mrs M have not provided evidence that the loan was actually unaffordable, which would be need to be shown if the complaint were to succeed on this point. |

| | |
|---|---|
| The Credit Agreement was arranged by an unauthorised credit broker, or by individuals working for an authorised credit broker who were not themselves authorised. This meant the loan was unenforceable. | The entity which arranged the Credit Agreement held the relevant regulatory permissions, so the agreement was not arranged by an unauthorised credit broker. Whether or not the individuals working on behalf of that entity were themselves authorised is not relevant. |
| The Supplier's terms and conditions contain unfair terms, which include its ability to repossess the membership and retain all sums paid in the event of small breaches by Mr and Mrs M | It's possible some of the Supplier's terms have the potential to operate in an unfair way, but I've not seen evidence that the terms have operated in that way in Mr and Mrs M's case, or are likely to operate in that way in the future. |
| The Supplier marketed and sold the membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations. | While it's possible the Supplier marketed the product in this way, it would need to have played a material part in Mr and Mrs M's decision to buy the Fractional Club membership, to render the credit relationship between them and the Lender unfair. I'm not convinced it did. **See further details below.** |

The reason why I've been unable to conclude that any potential marketing by the Supplier of the Fractional Club product to Mr and Mrs M as an investment is likely to have had a material impact on their decision to make his purchase, is due to a lack of *persuasive* evidence that this was the case. In fact, the available evidence appears to point towards other factors having been material to their purchasing decision.

When Mr and Mrs M's complaint was first made by PR, it took the form of a letter of complaint which was more or less identical to other letters I have seen from PR, sent on behalf of other complainants. There was little to distinguish it from many other complaints, and it contained no direct testimony from Mr and Mrs M. In other words, it was generic in nature.

We did not receive any direct testimony from Mr and Mrs M until April 2024, nearly nine years after the events in question. This was in the form of a witness statement which PR says was taken early in 2021. This statement is not dated, nor is it signed by Mr or Mrs M. Nevertheless, it is relatively detailed and has a feeling of authenticity about it, and I'm inclined to accept that it represents what Mr and Mrs M could remember, in early 2021, of what had occurred at the time of sale in 2015. I'm aware that memories of events which took place long ago can be unreliable, especially where the events are recalled in the context of preparation for litigation or other dispute resolution procedures.[1] I've needed to bear this in mind when considering Mr and Mrs M's statement.

Mr and Mrs M's statement is several pages long, but not once do they say the Supplier described the Fractional Club membership as an investment. They do say that the Supplier mentioned the timeshare would "increase in value" and that it would be easy to sell, and that:

*"We were offered that after the term they would sell the property and we would get a kick back they did the maths to show that it worked out cheaper to do this than pay for an all-inclusive family holiday each year".*

Based on these parts of the statement, I think it's plausible that the Supplier marketed the Fractional Club membership as an investment to Mr and Mrs M in an implicit way (i.e.

[1] See the case of *Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm)*

without calling it an investment). What doesn't come across in the statement however, is much of an indication that this was influential on Mr and Mrs M's purchasing decision. What comes across is that Mr and Mrs M felt pressured, but that the feature of the product which attracted them was its holiday-related benefits. I say this because most of the statement refers both to how the product was promoted on its holiday-related benefits, and how dissatisfied Mr and Mrs M were with these benefits in reality. Mr and Mrs M also directly stated that this is what convinced them, saying:

*"We were sold on the offer that we would be getting two weeks on the apartment each year…our points don't even get us one week a year."*

So it seems to me that the prospect of the Fractional Club membership being an investment did not play a material part in Mr and Mrs M's purchasing decision. Based on what they've said, it seems likely they'd have gone ahead with their purchase whether or not the Supplier had marketed or sold the product improperly as an investment.

It follows that I don't think the credit relationship between Mr and Mrs M, and the Lender, was rendered unfair to them by any breach of Regulation 14(3) of the Timeshare Regulations by the Supplier.

## Conclusion

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

## My provisional decision

For the reasons explained above, I'm not minded to uphold Mr and Mrs M's complaint.

Will Culley
**Ombudsman**