DRN-6049294

The complaint

Miss M's complaint is, in essence, that Shawbrook Bank Limited 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.

Background to the complaint

Miss M and Miss R were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time[1]. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 22 May 2017 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,240 fractional points at a cost of £26,464 (the 'Purchase Agreement'). However, after trading in another membership, the additional cost for Fractional Club membership was £5,464.

Fractional Club membership was asset backed – which meant it gave Miss M and Miss R 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.

Miss M paid for their Fractional Club membership by taking finance of £25,975 from the Lender (the 'Credit Agreement') in her name only. This included borrowing £20,511 to refinance an earlier loan.

Miss M and Miss R – using a professional representative (the 'PR') – wrote to the Lender on 29 March 2023 (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 didn't reply to the PR, so in due course it sent a chaser letter dated 8 September 2023. The Lender responded (the same day) to say that the complaint was out of time under the Limitation Act 1980.

The complaint was then referred to the Financial Ombudsman Service. An investigator clarified that the Lender's argument that the complaint had been made too late wasn't material to the May 2017 sale which is the subject of this complaint.

The investigator thereafter assessed the complaint and, having considered the information on file, rejected it on its merits.

Miss M and Miss R, through the PR, disagreed with the Investigator's assessment and asked for an Ombudsman's decision.

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[1] Although this complaint is by Miss M (only), the key documentation (other than the Loan Agreement) is in both Miss M's and Miss R's name. So, for accuracy, I will refer to Miss M and Miss R unless inappropriate to do so.

An ombudsman issued a provisional decision ('PD') on Miss M's complaint, making the following findings:

> ***"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.*
>
> ***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.*
>
> *It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Miss M and Miss R were:*
>
> 1. *Told that they had purchased an investment that would "considerably appreciate in value".*
> 2. *Promised a considerable return on their investment because they were told that they would own a share in a property that would considerably increase in value.*
> 3. *Told that they could sell their Fractional Club membership to the Supplier or easily to third parties at a profit.*
> 4. *Made to believe that they would have access to "the holiday apartment" at any time all year round.*
>
> *However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue.*
>
> *And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn't any accompanying evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.*

As for points 3 and 4, while it's possible that Fractional Club membership was misrepresented at the Time of Sale for one or both of those reasons, I don't think it's probable. They're given little to none of the colour or context necessary to demonstrating that the Supplier made false statements of existing fact and/or opinion. And as there isn't any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for these reasons, I don't think it was.

So, while I recognise that Miss M - and the PR - have concerns about the way in which Fractional Club 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 140A of the CCA: did the Lender participate in an unfair credit relationship?

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier 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 Miss M 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;*
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 Miss M and the Lender.

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

Miss M's and Miss R'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 Miss M. 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 Miss M 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 the Miss M.

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

The PR also says that there was one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Miss M and Miss R in practice, nor that any such terms led them to behave in a certain way to their 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.

Overall, therefore, I don't think that Miss M'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 says the credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club 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

The Lender does not dispute, and I am satisfied, that Miss M's and Miss R's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club membership as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But the PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Miss M and Miss R were told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this 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 Miss M 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 Club 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 Club membership was marketed or sold to Miss M and Miss R 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 Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

There is competing evidence in this complaint as to whether Fractional Club 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 Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Miss M and Miss R, 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.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Miss M and Miss R 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 the Consumer rendered unfair?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Miss M 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 Miss M 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 Fractional Club membership was not an important and motivating factor when they decided to go ahead with their purchase.

To help me decide this point, I've carefully considered what Miss M and Miss R have said in the course of the complaint about how the membership was sold to them and their motivation for taking it out.

In a joint Witness Statement dated 5 September 2024 they said:

> *"(The Supplier) stated that they would buy the share back at the end of the term, leading us to believe we would receive some monetary compensation in line with the rules and following completion of the sale of the timeshare we would receive a % of the profit."*

That was, in the main, the thrust of Miss M's and Miss R's evidence on the issue. I appreciate that this was all that they could recall in their Witness Statement with regards to what was said about how their timeshare membership was presented.

I've already acknowledged that it's possible Fractional Club membership was sold as an investment, but I'm not persuaded that Miss M and Miss R purchased the membership due to any possible breach of the regulation.

In explaining how I have come to this conclusion, I think it is helpful to set out the history of Miss M and Miss R's relationship with the Supplier as well as what they have said about their earlier purchases.

Miss M and Miss R first purchased a membership from the Supplier in March 2016, when they joined the Supplier's 'Signature' membership, purchasing 1,040 points they could use every other year or they could stay in a specific property for one week every other year. The following month, they upgraded their Signature membership to 1,420 fractional points to be used every other year – again they were entitled to stay at a different specified property for one week every other year.

In their Witness Statement, I note they describe the following:

> *"After buying a new boiler, we were gifted a [the Supplier] holiday, provided we attended one of their sales meetings at the Costa De Sol location, where the holiday would take place in March 2014. During this meeting, we were informed that we could take multiple holidays per year…*
>
> *…We were informed that we would be able to take multiple holidays per year; however, the initial contract did not allow this because we did not have enough points for the Supplier's point system, which required us to take out another contract with a new loan, in September 2015, during which only one of us was present."*

This, however, doesn't seem to fit with their history of memberships they bought from the Supplier. Their first purchase was in 2016, not 2014, although it may have been the case that they had attended a promotional holiday before then and not purchased. In any event, it appears that when they first purchased membership, they thought they would be able to take multiple holidays per year, but did not actually buy sufficient points for that.

But to my mind, that doesn't fit with what they bought in 2016, which were two memberships offering guaranteed holidays every other year. However, it does then make sense that they bought a new membership at the Time of Sale to increase their ability to take holidays – they increased their points entitlement from 1,420 points every other year to 1,240 points every year.

This is also supported by the Supplier's notes of the sale, which read:

> *"client purchasing with daughter, changing from sig as need more points. Not fussed about staying in a Sig unit, they purchased it originally as a points vehicle, but understand they need more points so upgrade to FPOC annual multiweek fraction. Love coming to CDS. Consolidating existing loan, monthies affordable…"*

And Miss M and Miss R's evidence, which says:

> *"We were told that the benefits would include several guaranteed holidays every year for 19 years."*

It seems to me that, they traded in their biannual fractional points (at the Supplier's Signature Collection) towards the purchase of annual Fractional and in doing so they acquired 530 additional points a year.

So, it seems to me that Miss M and Miss R were interested in taking holidays with the Supplier. And that isn't surprising to me, given the nature of the products purchased.

As set out above, there are some comments from Miss M and Miss R which suggests that the investment features of the Fractional Club membership was a factor in their purchasing decision. They have suggested that they were told the Supplier would buy back their share at the end of the term, however that isn't how Fractional Club membership was set up to work – the Allocated Property was to be placed for sale on the open market, with the proceeds divided amongst the relevant members. But I don't think this misunderstanding of the mechanics of the sale is determinative of this complaint.

However, despite what they said, their Witness Statement is brief with no material detail on what they were told, or why it had an influence on them. Further. It isn't clear to me whether they are referring to what happened at the Time of Sale or at the two sales the previous year. In my view, their account is so brief and lacks any detail that I can't put significant weight on it.

On the face of the evidence, and on balance, I'm not persuaded that Miss M and Miss R were sufficiently interested in the investment aspect of the Fractional Club that they wouldn't have pressed ahead with the purchase in 2017 in its absence.

Rather, in the circumstances, and on balance, I think Miss M and Miss R were more focused on the holidays they (more likely than not) had planned to use the product for.

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 Miss M and Miss R 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 was likely to have been material to the decision Miss M and Miss R ultimately made.

Linked to this is PR's argument in response to our Investigator that, as the 'unit share' is set out on the face of the pricing sheet (the percentage interest held in proceeds of sale of the Allocated Property), this shows they bought membership due to the investment element. However, it seems to me that this is simply a factual record of the purchase and I can't draw any such inference from this document.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Miss M's and Miss R's decision to purchase Fractional Club 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 Miss M and Miss R 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 Miss M and the Lender was unfair to them even if the Supplier had breached Regulation 14(3)."

The Lender responded to the PD and accepted it.

The PR also responded. It did not accept the PD and provided some further comments it wanted to be taken into account. It also raised, for the first time, an allegation that the payment of a commission by the Lender to the Supplier caused an unfair credit relationship.

The ombudsman who issued the PD was not able to issue a final decision on this complaint, so it was passed to me for further consideration. Having read everything, I sent the following email to both parties:

"I am writing to you as […] the ombudsman who issued the provisional decision, is now not able to issue a final decision on this complaint, and so it has been passed to me.

Having reviewed the file, I think [my colleague]'s provisional decision is reasonable and so I will now issue a further decision. But before I do so, I wanted to give both parties the opportunity to provide any further evidence or arguments. If you have anything further to provide, please do so by 8 December 2025.

In response to [my colleague]'s provisional decision, [Miss M]'s representative raised the issue of the payment of an undisclosed commission. As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 ('Hopcraft, Johnson and Wrench').

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

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission

paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. *The size of the commission (as a percentage of the total 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 [Miss M] 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.

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 [Miss M] 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.

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 [Miss 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 [Miss M] 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 [Miss M].”

The Lender responded to say it had nothing further to add.

The PR did not respond.

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:

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

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]

<u>The FCA's Principles</u>

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

My findings

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 was outlined in the provisional findings, for broadly the same reasons. For the avoidance of doubt, I adopt my colleague's provisional findings in this decision.

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 in the main relate to the issue of whether the credit relationship between Miss M and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Miss M as an investment at the Time of Sale. 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 the PD, the PR originally raised various other points of complaint, all of which were addressed at that time. But it didn't make any further comments in relation to those in their response to the PD. Indeed, it hasn't said it disagrees with any of the 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 the conclusions in relation to them as set out in the 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 PR has highlighted under Section 140B(9) of the CCA, the burden of proof falls on the Lender to disprove the allegation that its relationship with Miss M was unfair. I agree that this is correct, placing a burden on lenders during the process of litigation. That does not mean, though, that the Lender – or I – should take a claim at face value. There remains an onus on Miss M to provide some evidence for the claim she is making, despite the overall burden of proof resting with the Lender, as was set out in the judgment in *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34 at paragraph 40. I also remind both parties that it is my role to make findings on what I consider to be fair and reasonable in all the circumstances of any given complaint.

The Supplier's alleged breach of Regulation 14(3) of the Timeshare regulations

In its response to the PD, the PR has reasserted its view that the Supplier marketed the Fractional Club membership to Miss M as an investment and that this was a motivating factor in her decision.

It was accepted in the PD that the membership may well have been marketed as an investment to Miss M in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. It was also explained that while the Supplier's sales processes left open the possibility that the sales representative may have positioned Fractional Club membership as an investment, it wasn't necessary to make a finding on this as it is not determinative of the outcome of the complaint. My colleague explained that regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. The PR's response to the PD hasn't changed my view of this, and so whether the Supplier's breach of Regulation 14(3) led Miss M to enter into the Purchase Agreement and the Credit Agreement remains an important consideration.

In the PD it was explained the reasons why my colleague didn't think any breach of Regulation 14(3) had led Miss M to proceed with her purchase. In short, they were not persuaded that Miss M's decision was motivated by the prospect of a financial gain (i.e., a profit). In reaching that view, my colleague took into account the testimony given by Miss M in the course of her complaint. I recognise the PR has interpreted Miss M's testimony differently, and I have carefully considered its further comments. Ultimately though, they have not led me to a different conclusion to that reached in the PD.

The PR objects to the approach taken in assessing this aspect of the complaint, believing that it has detracted from the judgment in *Shawbrook & BPF v FOS*[2] and the case law that contributed to it, by requiring Miss M to have been "primarily or mainly motivated" by the investment element in order to uphold the complaint. But the PD did not make such a finding. My colleague said that, in their view, Miss M was highly motivated by the holiday options offered by the Supplier – which was a factor in the overall conclusion in light of all the available evidence that she would, on balance, have pressed ahead with her purchase of the Fractional Club membership even if there had been a breach of Regulation 14(3). I agree with this reasoning.

So for the reasons given in my PD and above, I do not think that any breach of Regulation 14(3), if there was one, was material to Miss M's decision to purchase the Fractional Club membership.

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.

This was done for the first time in response to the PD and I sent both parties an email set out in full above, explaining why I did not think the arrangements between the Lender and the Supplier led to an unfair credit relationship in this case. As neither party has asked me to revisit this, I adopt in full my reasoning to my overall findings.

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 Miss 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 Miss M 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.

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 Miss M'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

I do not uphold Miss M's complaint against Shawbrook Bank Limited.

[2] R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS').

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 28 January 2026.

Mark Hutchings
Ombudsman