DRN-6057061

Financial Ombudsman Service

The complaint

Miss W'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 and her former partner who I am very sorry to hear has since passed away) 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

In June 2014, Miss W's then partner purchased from a timeshare provider (the 'Supplier'), a Fractional timeshare (The 'Fractional Club')[1]. Although it seems Miss W was present at this sale and participated in the various discussions around it, only her late partner became a party to the purchase agreement and the credit agreement he used to help finance it.

Miss W's then partner, who passed away in 2019, only had this type of timeshare membership for around a year, until June 2015. At this point, he and Miss W then upgraded this membership to a type of enhanced product with the same Supplier, branded as the 'Signature Collection'. It is this product which is the subject of this complaint.

The Signature Collection membership had certain similarities to the existing Fractional Club which Miss W's partner had signed up to the year before. For example, it was asset backed, which meant it gave Miss W and her partner more than just holiday rights, it also included a share in the net sale proceeds of a property named on their Purchase Agreement (the 'Allocated Property') after their membership term ended. But, unlike the previous arrangement, the Signature Collection gave them guaranteed accommodation in an Allocated Property.

On 30 June 2015, Miss W and her partner entered into an agreement with the Supplier to buy 1,100 Signature Collection points at a total cost to them of £22,181 (the 'Purchase Agreement'). But after trading-in the existing Fractional Club timeshare membership from 2014, they ended up paying a total of £10,481 for membership of the Signature Collection, comprising an £11,700 trade-in value. After consolidating the aforementioned existing debt from 2014, they paid for their Signature Collection membership by taking finance totalling £24,219 from the Lender, Shawbrook Bank Limited, in their names (the 'Credit Agreement').

Miss W – using a professional representative (the 'PR') to bring this complaint – wrote to the Lender on 10 March 2023 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. A breach of contract by the Supplier giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
3. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.

[1] A fractional timeshare, as described here, is where the consumer(s) acquired a beneficial interest in a property when they became members.

(1) Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

Miss W says that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. told her and her then partner that they were buying an interest in a specific piece of "real property" when that was not true.
2. told them that the Signature Collection membership had a guaranteed end date when that was not true.
3. told them that Signature Collection membership was an "investment" when that was not true
4. told them that the Supplier's holiday resorts were exclusive to its members when that was not true

Miss W says that she has a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, she has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Miss W.

(2) Section 75 of the CCA: the Supplier's breach of contract

Miss W says that the Supplier breached the Purchase Agreement because she and her late partner found it difficult to book the holidays they wanted, when they wanted. She also alleged there is no guarantee that she will receive the share of the net sale proceeds of the Allocated Property.

As a result of the above, she says that she has a breach of contract claim against the Supplier, and therefore under Section 75 of the CCA, she has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Miss W.

(3) Section 140A of the CCA: the Lender's participation in an unfair credit relationship

The Letter of Complaint set out several reasons why Miss W says that the credit relationship between her and her late partner and the Lender was unfair to them under Section 140A of the CCA. In summary, they include the following:

1. The Signature Collection membership was marketed and sold to Miss W and her partner as an investment.
2. The contractual terms setting out (i) the duration of their Signature Collection membership and / or (ii) the obligation to pay annual management charges for the duration of their membership were unfair contract terms under the Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR').
3. They were pressured into purchasing the Signature Collection membership by the Supplier.
4. The Supplier's sales presentation at the Time of Sale included misleading actions and / or misleading omissions under the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations') as well as a prohibited practice under Schedule 1 of those Regulations.
5. The Supplier provided misleading information in relation to the Signature Collection's ongoing costs.

The Lender didn't agree it had done anything wrong. It said there was no compelling

evidence to uphold the complaint based on what it said were vague and generic statements which seemed to be from an often used and templated Letter of Complaint. It also said that Miss W and her late partner had essentially upgraded from an original Fractional Club timeshare product and had attended previous sales presentations, so would have had a clear understanding of the sales process prior to this 2015 purchase. The Lender also doesn't accept that the timeshare was sold or marketed as an investment.

Miss W later referred the complaint to the Financial Ombudsman Service.

I issued a provisional decision (PD) about this case on 19 August 2025 in which I said I was not intending to uphold Miss W's complaint. This PD is a comprehensive document which should be read in conjunction with this final decision, but I essentially explained about what I thought Miss W's likely motives were in buying this timeshare membership. I said that in my view she and her late partner would have likely pressed ahead with their purchase, and this was even whether or not there had been any breach of the relevant Timeshare Regulations (which at the time prevented the marketing or sale of these products as 'investments').

At the time of issuing my PD, I also deferred my conclusions on the matter of commission disclosure, in order to review that issue further in the light of a case making its way through the courts. I've since written to the parties (a 'side letter') setting out my thoughts on why I wasn't persuaded to uphold this particular aspect of the complaint either, as it seems there was no undisclosed commission paid in this case.

Miss W, through her PR, has disagreed with my PD findings and asked for a final decision. Her PR has also made representations about my side letter and the issue of commission which I will address further down. I have noted everything said on her behalf with great care.

The legal and regulatory context

As I said before, 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.

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.

In particular, I have reconsidered my thoughts in the light of the responses to my PD. However, I am not upholding Miss W's complaint. And this is my final decision.

As I explained in my earlier PD, 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. If I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

<u>Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale</u>

As both sides already know, a claim against the Lender under Section 75 essentially mirrors the claim Miss W could make against the Supplier. Certain conditions must be met if this protection is engaged – which are set out in the CCA. The Lender does not dispute that the relevant conditions are met in this complaint, and I'm satisfied that they are.

This part of the complaint was made for several reasons that I set out at the start of this Decision. They include the suggestion that Signature Collection membership had been misrepresented by the Supplier because Miss W and her late partner were told that they were buying an interest in a specific piece of "real property" when that was not true. However, telling prospective members that they were buying a fraction or share of one of the Supplier's properties was not untrue. Their share in the Allocated Property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give them that interest, it did not change the fact that they acquired such an interest.

The PR also said the Supplier told Miss W and her late partner that the Signature membership had a guaranteed end date when that was not true. But I can't see that what the Supplier said here was actually untrue. I've not seen anything which makes me think that the Allocated Property would not be able to be sold at the conclusion of the contract period. The Terms and Conditions generally set out that the title to the property is held by independent trustees, the sale of the Allocated Property can only be carried out by the Trustees on or after the proposed sale date, and the Allocated Property cannot be removed from the trust before that sale date. What's more, the sale date can only be delayed by the unanimous written consent of all fractional owners, in which Miss W and her late partner were included.

In addition, the PR also said in the Letter of Complaint that the Supplier told Miss W and her late partner that Signature membership was an 'investment' when that was not true. But, for reasons I'll go on to explain much more about below, Miss W and her late partner's membership plainly did have an investment element to it.

As for the rest of the Supplier's alleged pre-contractual misrepresentations, while I recognise that Miss W has concerns about the way in which the Signature Collection membership was sold, she has not persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for the other reasons alleged. And I say this because beyond the bare allegations, she hasn't provided any evidence to support them such as what exactly they were told, by whom and in what context. I also note that Miss W and her late partner didn't describe such statements being made by the Supplier at the Time of Sale in their testimony, and since they'd already had a previous membership with the Supplier, albeit of a different type, it would seem likely they already knew at the Time of Sale how the Supplier's resorts generally worked.

What's more, as there's nothing else on this particular file that persuades me there were any false statements of existing fact made by the Supplier at the Time of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reasons alleged.

For all these reasons, therefore, I do not think the Lender is liable to pay Miss W any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

Section 75 of the CCA: the Supplier's breach of contract

I've already summarised how Section 75 of the CCA works and why it gives Miss W a right of recourse against the Lender. So, it isn't necessary to repeat that here.

Miss W's PR says that she and her late partner could not holiday where and when they wanted to. But in my view, this is a generic comment which is not supported by any other explanatory detail or evidence. Whilst this issue is raised in the Letter of Complaint, no examples are given and it's unclear whether this apparent difficulty in securing holiday dates relates to the initial Fractional Club membership, Signature Collection membership, or both. As I say, I've also been presented with her own witness statement, but this makes no reference whatsoever to problems with getting satisfactory bookings. Indeed, she refers to one holiday being taken between the two sales (with no reference to any booking problems. So, in my view, there is a lack of consistency here between what Miss W says and what is alleged by her PR in this regard.

Miss W says that the Supplier breached the Purchase Agreement because there is no guarantee that she will receive a share of the net sale proceeds of the Allocated Property. I understand that she is saying that she fears that, when the time comes for the Allocated Property to be sold, she will not receive a share of the sales proceeds. However, it would seem that any breach of contract (if that occurs) lies in the future and is currently uncertain.

Overall, therefore, from the evidence I have seen, I do not think the Lender is liable to pay Miss W any compensation for a breach of contract by the Supplier. With that being the case, I do not think there's persuasive evidence that the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

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

I have already explained why I am not persuaded that the contract entered into by Miss W and her late partner was misrepresented (or breached) by the Supplier in a way that makes for a successful claim under Section 75 of the CCA and outcome in this complaint. But Miss W also says that the credit relationship between them and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time of Sale that she has concerns about. I explored these concerns and explained them in my PD.

Having considered the entirety of the credit relationship 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. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements;
4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
5. The inherent probabilities of the sale given its circumstances; and when relevant, any existing unfairness from a related credit agreement.

I considered the impact of these on the fairness of the credit relationship between Miss W and the Lender.

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

Miss W's complaint about the Lender being party to an unfair credit relationship was made for several reasons, all of which I set out at the start of this Decision.

They include the allegation that the Supplier misled Miss W and her late partner and carried on unfair commercial practices which were prohibited under the CPUT Regulations. But given the limited evidence in this complaint, I am not persuaded that anything done or not done by the Supplier was prohibited under the CPUT Regulations. The PR says that the right checks weren't carried out before the Lender lent to Miss W and her late partner. However, I haven't seen anything to persuade me that this was the case in this complaint. 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 W and her late partner 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. Again, from the information provided, I am not persuaded that the lending was unaffordable for Miss W and her late partner.

Elsewhere, I note what Miss W also says about how they found the length and approach of the sales' presentations to be onerous and stressful. No-one wants to be subjected to unfair sales practices, but Miss W herself also specifically says in her complaint that there were other couples present at the previous sale who did not make any timeshare purchases, which suggests to me that she and her late partner must have known this was something they could effectively walk away from when they revisited the same timeshare Supplier in 2015 and upgraded to what, for them, was a second timeshare product. They would therefore have been aware of what to expect. In any event, they were also given a 14-day cooling off period and she has not provided a credible explanation for why they did not cancel their Signature Collection membership during that time, if they felt gruelling and pressurised selling was a major and unfair feature.

As I'll explain below, I don't think the reason they went ahead with the Signature Collection purchase was because they were pressured into it – I think the circumstances and evidence in this case point to their purchase reasoning being related to a cohort of other issues which they felt brought them the prospect of the upgraded accommodation and improved holiday experiences, which they were interested in and likely motivated by.

I'm not persuaded, therefore, that the 2015 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 they say their credit relationship with the Lender was unfair to them. And that's the suggestion the Signature Collection membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

<u>The Supplier's alleged breach of Regulation 14(3) of the Timeshare Regulations</u>

The Lender does not dispute, and I am satisfied, that this Signature Collection 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 Signature Collection 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."

The PR says that the Supplier did exactly this at the Time of Sale – saying, in summary, that Miss W and her partner were told by the Supplier that Signature Collection membership was the type of investment that would only increase in value. Allegations of this nature are contained within the PR's Letter of Complaint.

The term “investment” is not defined in the Timeshare Regulations. But for the purposes of this 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 because it offered the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that Signature Collection membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn’t prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

In other words, the Timeshare Regulations did not ban products such as the Signature Collection. They just regulated how such products were marketed and sold.

To conclude, therefore, that this membership was marketed or sold 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 as an investment, i.e. told them or led them to believe that Signature Collection membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

I am familiar with the documentation and processes used by the Supplier during these types of sale. There is competing evidence in this complaint as to whether Signature Collection membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Signature Collection as an ‘investment’ or quantifying to prospective purchasers, such as Miss W and her partner, the financial value of the 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 Signature Collection membership as an investment. So, I accept that it’s equally possible that Signature Collection membership was marketed and sold 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. 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 said 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 could have had on the fairness of the credit relationship 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 here that was unfair and warranted relief as a result, then 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.

I've thought very carefully about what motivated Miss W and her partner to purchase the Signature Collection membership, considering all of the available evidence. Having done so, I do not think the prospect of a financial gain from this membership was an important and motivating factor when they decided to go ahead with this purchase.

In so far as any allegation of investment related marketing carried out by the Supplier during the sale is concerned, I first considered the Letter of Complaint compiled by Miss W's PR. In my view, this makes only a very limited and unsupported allegation that the Signature Collection membership was ever sold / marketed to Miss W and her late partner in breach of Regulation 14(3). It says, for example,

> *"Our clients also entered into the Scheme in reliance of the following statement made by* [the Supplier's] *sales representative in the course of the Sales Presentation:*
>
> *(…) That the scheme was an 'investment'.*
>
> *This statement was conveyed to our clients using the words set out above and / or the following words or phrases on their own or in combination:* ***'Investment'*** *in the context of our clients having somewhere to go in their retirement.*

Because this description is brief, unsupported and lacking in any explanation or context, in my view it doesn't in itself provide credible evidence that the Signature Collection was sold or marketed in breach of Regulation 14. I say this because I've noted that the Letter of Complaint then broadens out considerably and introduces new themes which Miss W is apparently unhappy about. It also goes onto explain how Miss W and her partner were evidently told about a much higher quality of property accommodation with the Signature Collection and other enhanced holiday experiences that could be enjoyed by upgrading to it. The Letter of Complaint also notes Miss W and her late partner agreed that the suites they were shown in the course of the Signature Collection tour / sales pitch had a *"wow factor", "looked beautiful"* and they were told the Signature offer was a *"significant upgrade on their existing membership…. The accommodation was brand new and top class"*.

Miss W's own account in her witness statement makes mention of the first purchase being described to them as a *"nest egg for the future because we would make a profit".* But her statement then moves on to the second purchase in 2015 where the Fractional membership was upgraded to the Signature Collection and Miss W says they were told that the Signature Collection was almost the same cost as the previous Fractional membership but was a much higher quality apartment.

I have also taken account that Miss W and her late partner's share in the Allocated Property clearly, in my view, constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But as I've said, the fact that the Signature Collection membership included an investment *element* did not, itself, transgress the prohibition in Regulation 14(3). The Timeshare Regulations did not ban products such as the Signature Collection. They just regulated how such products were marketed and sold.

Weighing all this up, and in the specific circumstances of this particular case, I do not think the prospect of a financial gain from this membership was an important and motivating factor when they decided to go ahead with their purchase. I think it's important to note that Miss W and her partner were already timeshare members. The evidence here is more persuasive that they knew what to expect during the sales pitch and they would have known that

upgrading wasn't something they needed to do; they had personally observed others declining similar purchases in the recent past. In essence, Miss W and her partner were increasing their holidaying points (and so, holiday rights) and I think the evidence is persuasive that they were motivated and excited by the prospect of the new and enhanced accommodation on offer at what they understood to be relatively good value.

Of course, this 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 I'm afraid Miss W doesn't persuade me that the purchase was motivated by the share in the Allocated Property and the possibility of a profit. So, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made. In my view, it's more likely that Miss W and her partner would have still pressed ahead with this purchase, whether or not it had been presented to them as an investment opportunity in breach of Regulation 14(3) of the Timeshare Regulations. I therefore don't think the credit relationship between them and Shawbrook Bank Limited was unfair.

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

The PR says that Miss W and her late partner were not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of their membership. The PR also says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

As I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I acknowledge that it is also possible that the Supplier did not give Miss W and her late partner sufficient information, in good time, on the various charges they could have been subject to as members in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Miss W nor the PR have persuaded me that they would not have pressed ahead with their purchases had the finer details of the Signature Collection's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its facts and circumstances.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Miss W and her late partner in practice, nor that any such terms led them to behave in a certain way to their detriment. So, with that being the case, I'm not persuaded that any of the terms governing Signature Collection membership are likely to have led to an unfairness that warrants a remedy.

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 W in arguing that the credit relationship with the Lender was unfair 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 Miss W, nor have I seen anything that persuades me that the commission arrangements between them gave the Supplier a choice over the interest rates that led Miss W into credit agreements that cost disproportionately more than they 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 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 in this case here.

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.

Responses to my PR and 'side letter'

The PR questioned whether my provisional conclusions ran contrary to precedent decisions issued by my ombudsman colleagues and the judgment handed down in *Shawbrook and BPF v FOS*. I don't believe they do. However, for the avoidance of doubt, other decisions issued by other ombudsmen do not have a precedent effect like some court judgments might, and each ombudsman must determine each case on its own specific facts.

I remind the PR that in my PD I accepted the *possibility* that Signature Collection membership was marketed and/or sold to Miss W as an investment, in breach of Regulation 14(3). I went on to explain that relevant case law[2] indicates that in considering the question of relief for any resultant unfairness in the credit relationship, I needed to take into account any material impact of such a breach on Miss W's decision whether to enter into the Purchase and Credit Agreements. It doesn't strike me that doing so flies in the face of either the handed down judgment or previous decisions the PR has mentioned

While the PR has referred me, once again, to Miss W's recollections and the Supplier's training materials, I have already thoroughly considered these when delivering my provisional findings. And I set out in my PD all the reasons why I didn't find that evidence sufficiently persuasive, that Miss W's purchase decision would have been any different given the other circumstances and motivational factors she had described. Having re-examined Miss W's statement that remains my view, for the reasons previously given.

So, as I said before whether or not the Supplier marketed or sold Signature Collection membership as an investment in breach of Regulation 14(3), I'm not persuaded Miss W's decision to make the purchase was materially impacted by the prospect of a financial gain. It follows that I find the credit relationship between Miss W and the Lender was not rendered unfair for this reason.

The PR has also asked for the documents the lender has provided to show that no commission was paid. While I appreciate the PR would like to have full disclosure of all of the documents and information the Lender has provided, our rules do not require me to provide this when dealing with a complaint.

As the PR will be aware, under DISP 3.5.9R I may, where I consider it appropriate, accept information in confidence (so that only an edited version, summary or description is disclosed to the other party). I'm satisfied that agreements between the Lender and the Supplier are commercially sensitive and that the summary information on commission arrangements we've already shared with the PR is appropriate in this case.

I appreciate the time the PR has taken to put together its submissions on behalf of Miss W. But I don't find what it has said offers persuasive grounds for me to reach a different conclusion on this issue.

I've previously set out my thoughts on any impact the Supreme Court's conclusions in *Hopcraft, Johnson and Wrench* has on Miss W's arguments that the credit relationship with

[2] *Carney* and *Kerrigan*

the Lender was unfair for reasons relating to commission given the facts and circumstances of this complaint.

The PR's response doesn't offer anything that leads me to think that, for the most part, any of the factors it has referenced were in fact at play in Miss W's case. It hasn't, for example, provided evidence to show the existence of commercial or contractual ties that were concealed from Miss W, any persuasive reasons to conclude that the Supplier's role was that of advisor to Miss W, or to show that any other conflict of interest arose from the roles the Supplier did perform.

For such a claim to be successful would require more than the bare assertions that have been made in this case[3]. I'm not persuaded that it is sufficient, as the PR seems to contend, simply to suggest unsubstantiated allegations of fact and require that the Lender disprove them else the credit relationship be deemed unfair.

I'm satisfied the Lender has provided sufficient information in response to my enquiries to enable me to reach a conclusion about its commission arrangements with the Supplier. I've seen nothing in this case that leads me to think what the Lender has said about there being no commission paid is inaccurate. So, there's no reason for me to reach a different finding over those commission arrangements.

Section 140A conclusion

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I remain unpersuaded that the credit relationship between Miss W and the Lender under the Credit Agreement and related Purchase Agreement was unfair such that it warrants the Lender offering any redress.

Conclusion

After careful reconsideration of the facts and circumstances of this complaint, I adopt my provisional conclusions as part of my final decision. For the reasons I've given above and in my earlier correspondence I've mentioned, I don't think the Lender acted unfairly or unreasonably when it dealt with Miss W's section 75 claim(s). And I'm not persuaded that the Lender was party to a credit relationship in this case that was unfair for the purposes of section 140A of the CCA. Having taken everything into account, I see no other reason why it would be fair or reasonable for me to direct the Lender to compensate Miss W. I'm sorry to disappoint her.

My final decision

I do not uphold this complaint.

I do not require Shawbrook Bank Limited to do anything more.

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[3] In *Wilson v Clydesdale Financial Services Ltd t/a Barclays Partner Finance* [2021] (Unreported), the court took the view that the burden is on the debtor to prove on the balance of probabilities *the facts* that purportedly create the unfairness. It is then that the lender's burden of proof that requires it to prove *the relationship* was not unfair kicks in. While not amounting to legal precedent, the similarity of the subject matter of that case suggests to me that it is reasonable to take the same approach when considering the facts in this case.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss W to accept or reject my decision before 3 February 2026.

Michael Campbell
Ombudsman