DRN-6065432

The complaint

Mr and Mrs S' complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying claims under Section 75 of the CCA.

What happened

Mr and Mrs S were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the products at the centre of this complaint is their memberships of timeshares that I'll call the 'Fractional Club' and the 'Signature Collection' – which they purchased on the dates below:

- 1,300 Fractional Club points on 14 August 2014 for £10,185 – having traded in their previous membership (the 'First Purchase Agreement').
- 1,500 Signature Collection points on 9 April 2015 for £12,171 – having traded in their Fractional Club membership (The 'Second Purchase Agreement').

  (Which, when appropriate, I'll simply refer to as the 'Purchase Agreements'.)

As Mr and Mrs S' complaint concerns both purchases, 14 August 2014 (the 'First Time of Sale') and 9 April 2015 (the 'Second Time of Sale') are the 'Times of Sale' for the purposes of my provisional decision.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs S more than just holiday rights. It also included a share in the net sale proceeds of a property named on the First Purchase Agreement (the 'First Allocated Property') after the end of their membership term.

Similarly, Signature Collection membership was asset backed and included a share in the net sale proceeds of a property named on the Second Purchase Agreement (the 'Second Allocated Property') after the end of Mr and Mrs S' membership term. However, the Signature Collection differed from other timeshares offered by the Supplier, including the Fractional Club, in that members had preferential rights to stay in their allocated property, and the properties were said to be more luxurious.

When appropriate, I'll refer to the First Allocated Property and Second Allocated Property as the 'Allocated Properties').

Mr and Mrs S paid for their timeshares by taking the following amounts of finance of from the Lender:

- £20,681 on 14 August 2014 – which included the consolidation of previous borrowing (the 'First Credit Agreement').
- £33,335 on 9 April 2015 – which included the consolidation of the First Credit Agreement (the 'Second Credit Agreement').

(Which, when appropriate, I'll simply refer to as the 'Credit Agreements'.)

The First Credit Agreement ended on 20 May 2015 once the outstanding balance had been consolidated into the Second Credit Agreement. The Second Credit Agreement ended on 28 June 2016 when Mr and Mrs S settled the outstanding balance. I shall refer to the credit relationship arising from the First Credit Agreement as the 'First Credit Relationship' and that arising from the Second Credit Agreement as the 'Second Credit Relationship'.

Mr and Mrs S – using a professional representative (the 'PR') – wrote to the Lender on 18 March 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr and Mrs S' concerns as Section 75 claims and issued a response explaining why it was not prepared to accept these.

Mr and Mrs S' complaint was referred to the Financial Ombudsman Service on 2 May 2023. While the complaint was awaiting assessment by one of our Investigators, the Lender issued a final response letter which said it was time barred.

The complaint was then assessed by one of our Investigators who, having considered the information on file, said that Mr and Mrs S' concerns about the First Credit Relationship being unfair had been made out of time, and the remainder of their complaint should not be upheld.

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

I issued a jurisdiction decision where I explained why I cannot consider Mr and Mrs S' complaint about the First Credit Relationship being unfair. But that I can consider their complaints about the Second Credit Relationship being unfair and the Lender's refusal to pay the Section 75 claims.

I then issued a provisional decision (the 'PD') on the parts of the complaint that I can consider. The PD was dated 9 December 2025 and said:

> "I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I do not currently think this complaint should be upheld.
>
> However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.
>
> **Section 75 of the CCA: the Supplier's misrepresentations at the Times of Sale**
>
> This part of Mr and Mrs S' complaint was made for several reasons, which included that the Supplier misrepresented the Fractional Club and Signature Collection memberships at the Times of Sale as it told them they had purchased investments which would considerably increase in value and that they would have access to the Allocated Properties at any time.
>
> Generally, creditors can reasonably reject Section 75 claims that they are first made

aware of after the claim has become time barred under the Limitation Act (the 'LA'), as it wouldn't be fair to expect them to look into such claims so long after the liability arose, and after a limitation defence would have been available in court. Therefore, it's relevant to consider whether Mr and Mrs S' Section 75 claims were time barred under the LA before they put them to the Lender.

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

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

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

The dates on which the causes of action accrued were the Times of Sale. That's when Mr and Mrs S entered into the purchases of their timeshares based on the alleged misrepresentations of the Supplier – which they say they relied on. Further, as the loans from the Lender were used to help finance the purchases, it was when they entered into the Credit Agreements that they suffered losses.

Mr and Mrs S first notified the Lender of their Section 75 claims on 18 March 2022. Given more than six years had passed between the Times of Sale and when they first put their claims to the Lender, in my view it was neither unfair nor unreasonable that the Lender rejected their concerns about the Supplier's alleged misrepresentations.

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

I've already explained why I don't think the Lender acted unfairly or unreasonably when it rejected Mr and Mrs S' Section 75 claims in respect of the Supplier's alleged misrepresentations at the Times of Sale. And as I've said, I've already explained in a separate jurisdiction decision why I can't consider Mr and Mrs S' concerns about the First Credit Relationship being unfair.

But there are other aspects of the sales process at the Second Time of Sale 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 Second Credit Relationship between Mr and Mrs S and the Lender along with all the circumstances of the complaint, I don't think it 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 Second Time of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Second 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 Second 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 Second Time of Sale;
5. The inherent probabilities of the sale given its circumstances; and, when relevant
6. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the Second Credit Relationship between Mr and Mrs S and the Lender.

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

Mr and Mrs 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 Mr and Mrs S. 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 Mr and Mrs S was actually unaffordable before also concluding that they lost out as a result and then consider whether Second 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 them.

Connected to this is the suggestion by the PR that the Second Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce it. However, it looks to me like Mr and Mrs S 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 Signature Collection membership. And as the lending doesn't look like it was unaffordable for them, even if the Second 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 Mr and Mrs S experiencing a financial loss – such that I can say that the Second Credit Relationship 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 Second Credit Agreement wasn't arranged properly.

The PR also says that there were one or more unfair contract terms in the Second Purchase Agreement. But as I can't see that any such terms were operated unfairly against Mr and Mrs S 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 Signature Collection membership are likely to have led to an unfairness that warrants a remedy.

I acknowledge that Mr and Mrs S may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Signature Collection membership when they simply did not want to. They were also given a 14-day cooling off period and have not provided a credible explanation for why they did not cancel their membership during that time. And with all that being the case, there is insufficient evidence to demonstrate that Mr and

Mrs S made the decision to purchase Signature Collection membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that the Second Credit Relationship was rendered unfair to Mr and Mrs S under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR says the Second Credit Relationship was unfair to them. And that's the suggestion that Signature Collection membership was marketed and sold to them as an investment in breach of a prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Mr and Mrs S' 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 the Signature Collection membership as an investment. This is what the provision said at the Second 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 Second Time of Sale – saying, in summary, that Mr and Mrs S were told by the Supplier that the Signature Collection 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 Second Allocated Property clearly constituted an investment as it offered Mr and Mrs S the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it's 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 Signature Collection membership was marketed or sold to Mr and Mrs S 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 Signature Collection 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 Signature Collection

membership was marketed and/or sold by the Supplier at the Second Time of Sale as an investment in breach of Regulation 14(3) of the Timeshare Regulations.

On the one hand, it's clear that the Supplier made efforts to avoid specifically describing membership of the Signature Collection as an "investment" or quantifying to prospective purchasers, such as Mr and Mrs S, the financial value of their share in the net sales proceeds of their allocated property along with the investment considerations, risks and rewards attached to it.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative(s) may have positioned Signature Collection membership as an investment. So, I accept that it's also possible that Signature Collection membership was marketed and sold to Mr and Mrs S 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.

Would the Second Credit Relationship have been rendered unfair to Mr and Mrs S had there been a breach of Regulation 14(3) of the Timeshare Regulations?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Second Time of Sale, I now need to consider what impact that breach had on the fairness of the Second Credit Relationship under the Second 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 Mr and Mrs S and the Lender that were unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Second Purchase Agreement and Second Credit Agreement is an important consideration.

But on my reading of the evidence before me, the prospect of a financial gain from Signature Collection membership was not an important and motivating factor when Mr and Mrs S decided to go ahead with their purchase at the Second Time of Sale.

The PR has provided a statement from Mr and Mrs S in support of their complaint. The first part contains their recollections of their various interactions with the Supplier. In respect of the Second Time of Sale, this says:

> "This holiday was taken at [a Supplier resort in Spain] as again we couldn't book anything outside of either Tenerife or mainland Spain, despite being given brochures for exchanges, this just never worked out there was always a missing element mostly [we] didn't have enough points or it was basically the wrong time of year. So basically our global network of accommodation options was restricted to Spain, Tenerife or Turkey which is another [Supplier] resort.

> The last time we upgraded to Signature we were assured this would give us the options that we needed and not to forget we could sell it in later years and recoup our funds. I even tried to cancel at a later date and was then told that [the Supplier] do not do resale – this was a complete turnaround from what we'd always been led to believe.
>
> On top of all the above there were annual maintenance fees of approx. £1k per year. We were told this was an exclusive members only resort and I met numerous families who had booked through other tour operators and enjoyed the beautifully manicured gardens that my maintenance fees helped to provide."

The extract of the statement I have quoted above does not indicate that Mr and Mrs S bought Signature Collection membership in the expectation or hope of a financial gain or profit. They only say that the sales representative(s) told them they would be able to "recoup" their funds at the end of the membership term. So, they do not appear to have purchased Signature Collection membership on the understanding they could potentially profit from it.

It seems instead that Mr and Mrs S purchased Signature Collection membership as they were unhappy with the holiday options available under their previous membership and "were assured this would give [them] the options that [they] needed".

I explained in my jurisdiction decision that I would need to consider whether there was any existing unfairness from the First Credit Relationship when considering whether the Second Credit Relationship was unfair, as the Lender financed both purchases and the outstanding balance under the First Credit Agreement was consolidated into the Second Credit Agreement.

But it does not appear that the purchase at the First Time of Sale was made in the expectation or hope of a financial gain or profit either. Recalling that sale, Mr and Mrs S say:

> "The following year again we struggled to be able to afford any of the holiday options that were available with our points for the summer holidays, finally going to [a Supplier resort] in Tenerife but borrowing points from later years to secure our holiday at the end of August."

It appears that the motivation behind this purchase was additional points so that Mr and Mrs S could reserve holidays at the time of year they wanted. So, I am not satisfied there was any existing unfairness from the First Credit Relationship that impacted Mr and Mrs S' decision to purchase at the Second Time of Sale.

The second part of the statement explains why Mr and Mrs S consider their timeshare purchases were misrepresented to them. It says:

> "We believe that the sale of our various timeshare products were subject to misrepresentation for the following reasons:-
>
> […]
>
> - We were informed that the purchase price for our timeshare fractional ownership products would be an investment which would see a profit when the properties were sold in 19 years' time. We were told that

> Spanish house prices had fluctuated over the last few years but generally they performed similar to the UK, doubling every 8-10 years. We were led to believe that we owned a fraction of the apartment, similar to a leasehold flat, which had a monetary resale value that could be recouped at the end of the term; we now understand that this timeshare has little or no value and is unlikely to be sold with repayment of our purchase price and profits as expected."

However, I have seen incredibly similar wording in other complaints brought to us by the PR. So, I am not persuaded this paragraph has been tailored based on individual comments Mr and Mrs S made at the time it was written.

But even if I was satisfied that the paragraph contains personal recollections from Mr and Mrs S, it does not explain why, or indeed if, the share in the Second Allocated Property was the driving factor for their purchase at the Second Time of Sale. It is simply a description of what was said by the sales representative(s).

And in the same section, there is the following comment:

- "We only ever wanted to receive good value, high quality accommodation for family holidays enabling us to take 2 weeks during school holiday periods every year which is what [the Supplier] led us to believe we would receive."

Having carefully considered Mr and Mrs S' statement in the round, I am satisfied that the motivation behind their purchase at the Second Time of Sale was holiday based, rather than the investment element of Signature Collection membership.

That doesn't mean they weren't interested in a share in the Second Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs S don't persuade me that their purchase at Time of Sale 2 was motivated by their share in the Second 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 they ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs S' decision to purchase at the Second Time of Sale was motivated by the prospect of a financial gain (i.e. a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the Second Credit Relationship was unfair to Mr and Mrs S even if the Supplier had breached Regulation 14(3)."

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

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

I am now in a position to finalise my decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've considered the case afresh following the response from the PR. Having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the PD only relate to the issue of whether the Second Credit Relationship between Mr and Mrs S and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the relevant membership was sold to Mr and Mrs S as an investment at the Second Time of Sale. It's now also argued for the first time that the payment of commission by the Lender to the Supplier led to an unfair credit relationship.

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

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

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

I explained at length in my PD why I was not persuaded that the motivation for Mr and Mrs S' purchase at the Second Time of Sale was the investment element of Signature Collection membership. And why I was satisfied their motivation was holiday based.

Nothing the PR has said in response to my PD has changed my view. So, I was not, and still am not, persuaded that any breach of Regulation 14(3) was material to Mr and Mrs S' purchasing decision at the Second Time of Sale.

The PR said that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my PD, the Timeshare Regulations did not ban products such as the Signature Collection. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances.

Having carefully considered the PR's further comments, I still am not persuaded that the

evidence suggests that Mr and Mrs S purchased the Signature Collection membership because of any breach of Regulation 14(3). And for that reason, I still don't think the Second Credit Relationship was unfair to them.

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

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('*Hopcraft, Johnson and Wrench*').

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

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship […] was unfair" (see paragraph 327);
2. The failure to disclose the commission; and
3. The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. The size of the commission as a proportion of the charge for credit;
2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);
3. The characteristics of the consumer;
4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and
5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, it sets out principles which apply to credit brokers other than car dealer credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under Rule 3.6.4 of the FCA's Dispute Resolution rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mr and Mrs S in arguing that the Second Credit Relationship with the Lender was unfair to them 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 Mr and Mrs S, 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.

I acknowledge that it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Second Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But as I've said before, the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Second Time of Sale, it's for the reasons set out below that I don't currently think any such failure is itself a reason to find the Second Credit Relationship unfair to Mr and Mrs S.

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 Second Credit Agreement. And as it wasn't acting as an agent of Mr and Mrs S but as the supplier of contractual rights they obtained under the Second 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 Second Credit Agreement and thus a fiduciary duty.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, the Lender didn't pay the Supplier any commission at the Second 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 commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the Second Credit Relationship unfair to Mr and Mrs S.

S140A conclusion

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

Overall conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs S' Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with him under the Second 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 final decision

My final decision is to not uphold Mr and Mrs S' complaint about Shawbrook Bank Limited for the reasons provided.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 6 February 2026.

Alex Salton
Ombudsman