

The complaint

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

What happened

Ms P and Ms R were members of a timeshare provider (the 'Supplier') – having previously purchased a product from it. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they upgraded on 25 March 2015 (the 'Time of Sale'). After trading in their existing membership, they paid £7,432 for 1,180 fractional points (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Ms P and Ms 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 the end of their membership term.

Ms P and Ms R paid for their Fractional Club upgrade by taking finance of £19,728 from the Lender (the 'Credit Agreement'). The amount borrowed exceeded the purchase price as Ms P and Ms R consolidated the finance taken to fund their previous membership into this loan.

Ms P and Ms R – using a professional representative (the 'PR') – wrote to the Lender on 19 July 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.

As the Lender was unable to provide a final response to the complaint, the PR referred it to the Financial Ombudsman Service on 24 March 2023. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

I considered the matter and issued a provisional decision (the 'PD') dated 20 December 2025. In that decision, I said:

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

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

has said, that does not mean I have not considered it.

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

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

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

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

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

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

The date on which the cause of action accrued was the Time of Sale. That's when Ms P and Ms R entered into the purchase of their timeshare based on the alleged misrepresentations of the Supplier – which they say they relied on. Further, as the loan from the Lender was used to help finance the purchase, it was when they entered into the Credit Agreement that they suffered a loss.

Ms P and Ms R first notified the Lender of their Section 75 claim on 19 July 2022. Given more than six years had passed between the Time of Sale and when they first put their claim 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 Ms P and Ms R's Section 75 claim in respect of the Supplier's alleged misrepresentations at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Ms P and Ms R and the Lender along with all the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I

have looked at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Time of Sale in relation to Fractional Club membership, 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
6. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationship between Ms P and Ms R and the Lender given their circumstances at the Time of Sale.

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

Ms P and Ms 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 Ms P and Ms R. 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 Ms P and Ms R 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 them.

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 Ms P and Ms R 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 the Fractional Club upgrade. 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 Ms P and Ms R experiencing 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 were one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Ms P and Ms 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.

I acknowledge that Ms P and Ms R 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 the Fractional Club upgrade 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 purchase during that time. And with all that being the case, there is insufficient evidence to demonstrate that Ms P and Ms R made the decision to purchase the Fractional Club upgrade because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Ms P and Ms R'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 the Fractional Club upgrade 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

A share in the Allocated Property clearly constituted an investment as it offered Ms P and Ms R 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 the Fractional Club upgrade included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

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

To conclude, therefore, that the Fractional Club upgrade was marketed or sold to Ms P and Ms 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 the upgrade to them as an investment, i.e. told them or led them to believe that the Fractional Club upgrade 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 the Fractional Club upgrade was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of Regulation 14(3) of the Timeshare Regulations.

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

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned the Fractional Club upgrade as an investment. So, I accept that it's also possible that the Fractional Club upgrade was marketed and sold to Ms P and Ms 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.

Would the credit relationship between the Lender and Ms P and Ms R have been rendered unfair to them 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 Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Ms P and Ms R 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 Ms P and Ms R 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 the Fractional Club upgrade was not an important and motivating factor when they decided to go ahead with their purchase.

The PR has provided a statement from Ms R containing her recollections of the Time of Sale. In the statement, she says that the relevant sales representative(s) said the following about the investment element of the Fractional Club upgrade:

"We were informed that we would have a share in the property we were asked to buy, and we would receive our share at the end when the property is sold."

But this is simply a description of how Fractional Club membership worked and does not explain the motivation behind Ms P and Ms R's purchase. Moreover, her comments do not suggest they were left with the impression that the Fractional Club upgrade offered them the prospect of a financial gain.

Ms R goes on to say that Ms P "was enticed by the idea of being able to have at least one holiday a year" and that this was also "appealing" to her. So, her comments suggest that it was the holiday element of the Fractional Club upgrade, rather than the investment element, that was the motivation behind the purchase.

That doesn't mean Ms P and Ms R 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 Ms P and Ms R 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 they ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club upgrade as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Ms P and Ms R's decision to purchase this at the Time of Sale was motivated by the prospect of a financial gain (i.e. a profit). On

the contrary, I think the evidence suggests 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 credit relationship between Ms P and Ms R and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

Section 140A: 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 Ms P and Ms R and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

The Supplier's alleged breach of Spanish Law and its implications on the Credit Agreement

The PR argues that, because the Purchase Agreement was unlawful under Spanish law in light of certain information failings by the Supplier, I should treat that Agreement and the Credit Agreement as rescinded by Ms P and Ms R and award them compensation accordingly – in keeping with the judgment of the UK's Supreme Court in *Durkin v DSG Retail* [2014] UKSC 21 ('*Durkin*').

However, as the Lender hasn't been party to any court proceedings in Spain, it seems to me that there is an argument for saying that the Purchase Agreement is valid under English law for the purposes of *Durkin*.

I also note that the Purchase Agreement is governed by English law. So, it isn't at all clear that Spanish law would be held relevant if the validity of the Purchase Agreement were litigated between its parties and the Lender in an English court. For example, in *Diamond Resorts Europe and Others* (Case C-632/21), the European Court of Justice ruled that, because the claimant lived in England and the timeshare contract governed by English law, it was English law that applied, not Spanish, even though the latter was more favourable to the claimant in ways that resemble the matters seemingly relied upon by the PR.

Overall, therefore, in the absence of a successful English court ruling on a timeshare case paid for using a point-of-sale loan on similar facts to this complaint, and given the facts and circumstances of this complaint, I'm not persuaded that it would be fair or reasonable to uphold it for this reason."

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 Ms P and Ms R's Section 75 claim, and I was not persuaded that the Lender was party to an credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I 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 and evidence to be considered. The Lender accepted the PD and had no further comments.

I am now in a position to finalise my decision.

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 responses from the parties. Having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

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

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

The PR's further comments in response to the PD only relate to the issue of whether the credit relationship between Ms P and Ms R and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the Fractional Club upgrade was sold to them as an investment at the 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 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 in relation to those other points. And since I haven't been provided with anything more in respect of those other points by either party, I see no reason to change my conclusions about them as set out in my PD. So, I'll focus here on the PR's points raised in response.

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

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

As I explained in my PD, in her statement, Ms R simply provided a description of how Fractional Club membership worked rather than explaining why, or indeed if, the investment element was the motivation behind her and Ms P's purchase at the Time of Sale. And her comments suggest that it was the holiday element of the Fractional Club upgrade, rather than the investment element, that was the motivation behind the purchase.

The PR says that Ms P and Ms R were "commercially unsophisticated individuals", so it isn't surprising that Ms R did not use technical investment terminology when recounting her experience. I agree that is not surprising – and for the avoidance of doubt – I have not rejected Ms P and Ms R's complaint because Ms R did not use technical language in her statement.

I set out in my PD that to uphold Ms P and Ms R's complaint because of a breach of Regulation 14(3), I would have to be persuaded that any breach, if it did occur, led them to enter into the Purchase Agreement and Credit Agreement. And ultimately, having carefully considered Ms R's testimony, I remain unpersuaded that any breach of Regulation 14(3) was material to their purchasing decision.

The PR says that as the Supplier's pricing sheet refers to the "Unit Share %" provided under Ms P and Ms R's Fractional Club upgrade, this shows the investment element was an "important part" of the sales process and "played quite an important role" in their purchasing decision. But I don't agree. As I explained in my PD, it is not in dispute that the Fractional Club upgrade contained an investment element and it's possible that it was marketed or sold

to Ms P and Ms R as an investment (although I have made no finding on this). However, the simple fact that their share in the Allocated Property was recorded on the pricing sheet does not offer an insight into their motivation for their purchase.

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

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

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

The PR says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

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

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

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

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

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

1. The size of the commission as a proportion of the charge for credit;
2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);

3. The characteristics of the consumer;
4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and
5. Compliance with the regulatory rules.

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

But I don't think *Hopcraft, Johnson and Wrench* assists Ms P and Ms R in arguing that their credit relationship with the Lender was unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Ms P and Ms R, 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 Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

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

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 Ms P and Ms R but as the supplier of contractual rights they obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreement and thus a fiduciary duty.

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 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 credit relationship unfair to Ms P and Ms R.

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 Ms P and Ms R and the Lender under the 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 Ms P and Ms R's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

My final decision

My final decision is to not uphold Ms P and Ms R's complaint about Shawbrook Bank Limited for the reasons provided.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P and Ms R to accept or reject my decision before 11 February 2026.

Alex Salton
Ombudsman