DRN-6077449

The complaint

Mrs and Mr 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

Mrs and Mr R purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 12 March 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy Fractional Club membership at a cost of £19,044 (the 'Purchase Agreement').

Fractional Club membership was asset backed, which meant it gave Mrs and Mr 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 membership term ends.

Mrs and Mr R – using a professional representative (the 'PR') – wrote to the Lender on 30 March 2023 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't materially 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 rejected the complaint on every ground. The complaint was then referred to the Financial Ombudsman Service. It was assessed by an investigator who also rejected the complaint on its merits. Mrs and Mr R disagreed with the investigator's assessment and asked for an ombudsman's decision – which is why it was passed to me.

I issued a provisional decision (PD) about this case on 23 September 2025 in which I comprehensively set out my reasoning for not upholding the complaint. The PD invited the parties to respond with any further information or evidence they wanted to submit. Further to this, I issued a second communication (a 'side letter') to the parties on 18 December 2025 about commission. In this I said I wasn't 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 Mrs and Mr R.

I've had a response from Mrs and Mr R's PR which basically disagrees with my PD. I have read everything said on their behalf carefully. As I said before, 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. I have already set out in the PD the legal and regulatory context in which I'm making my decision about this case. For further information, I have also considered the following:

The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance
Below are the most relevant provisions and/or guidance as they were at the relevant time:

- CONC 3.7.3 [R]

- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

The FCA's Principles
The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

What I've decided – and why

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

Having done this, I am not upholding this complaint. This is my final decision.

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

The CCA introduced a regime of connected lender liability under section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mrs and Mr R were:

1. Told that they had purchased an investment that would considerably appreciate in value when that was not true.
2. Told that they would own a share in a property that would increase in value during the membership term when that was not true.
3. Told that they could sell back the Fractional Club membership easily to the Supplier or to third parties at a profit.
4. Made to believe that they would have access to an "apartment' at any time all year round when that was not true.

However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. Even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn't enough evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

As for points 3 and 4, while it's possible that the Fractional Club membership was misrepresented at the Time of Sale for one or both of those reasons, I don't think it's probable. These allegations lack the necessary detail and context to show that the Supplier made false statements of existing fact or misleading opinions. Also, since there's no other supporting evidence on file to back up the suggestion that the membership was misrepresented in these ways, I don't think it was.

So, while I recognise that Mrs and Mr R and the PR have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. So, this means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

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

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

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

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;
3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
4. The inherent probabilities of the sale given its circumstances; and when relevant, any existing unfairness from a related credit agreement.
5. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationship between Mrs and Mr R and the Lender.

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

Mrs and Mr 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 affordability checks weren't carried out before the Lender lent to Mrs and Mr 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 Mrs and Mr 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 for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mrs and Mr R.

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 Mrs and Mr 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 Fractional Club membership. Also, as the lending doesn't look like it was unaffordable, 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 Mrs and Mr R suffering a financial loss – such that I can say that the credit relationship in question was unfair as a result. 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.

I acknowledge Mrs and Mr R may have felt weary after a sales process that went on for a long time. But I think what they have to say about what was said / done by the Supplier during their sales presentation that made them feel as if they had *no choice* but to purchase membership is somewhat contradictory. They imply they weren't given time to effectively digest all the documentation. However, they also say that they were given a 14-day cooling off period, and they have not provided a credible explanation for why they did not cancel their membership during that time, if they felt pressured into buying something they didn't want to buy. With all of that being the case, there is insufficient evidence to demonstrate that Mrs and Mr R made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mrs and Mr R's credit relationship with the Lender was rendered unfair 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. And that's the suggestion that Fractional Club membership was marketed and sold as an investment in breach of prohibition against selling timeshares in that way.

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

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

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

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

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

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

A share in the Allocated Property clearly constituted an investment as it offered Mrs and Mr 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 is important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in

Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

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

To conclude, therefore, that Fractional Club membership was marketed or sold to Mrs and Mr R as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

I have now seen a great many similar cases to this and am familiar with the documentation and processes typically used at around the relevant time. There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mrs and Mr R, 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 Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mrs and Mr 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. So, with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Was the credit relationship between the Lender and the Consumer rendered unfair?

Having found that the Supplier may have breached Regulation 14(3) of the Timeshare Regulations at the time of sale, I now need to consider what impact any breach could have had on the fairness of the credit relationship between Mrs and Mr R and the Lender under the Credit Agreement and related Purchase Agreement. Case law on Section 140A makes it clear that regulatory breaches do not automatically render a credit relationship unfair. Such breaches and their consequences (if any) must be assessed in the round, rather than in a narrow or technical way.

If I am to conclude that a breach of Regulation 14(3) resulted in an unfair credit relationship warranting relief, then an important consideration is whether the Supplier's breach led Mrs and Mr R to enter into the Purchase Agreement and the Credit Agreement. To decide this, I have reviewed the allegations put forward by the PR and revisited Mrs and Mr R's personal statement. I have considered carefully what they themselves say.

Regarding any evidence of investment-related marketing during the sale, the PR alleges: *"my client was told that they had purchased an investment and that this would considerably appreciate in value"* and that they would receive a *"considerable return on* [the] *investment."* However, the Letter of Complaint provides no further detail about what was said or by whom

to substantiate this language. Importantly, Mrs and Mr R's own statement differs in material ways from the PR's allegations. They do not say they were promised a 'considerable return', so the PR's claims go, in my view, substantially beyond what Mrs and Mr R themselves actually report. I am therefore not persuaded by the PR's arguments about the timeshare being something they would almost certainly gain from.

As I explained in my PD, I take "investment" to mean a transaction where money or property is committed with the expectation or hope of financial gain or profit. Based on the overall circumstances and Mrs and Mr R's own statement, I do not think their purchasing rationale met this threshold. Their motivations appear to have come from other factors.

For example, they acknowledged only a *"chance that the value could be more,"* which does not suggest to me that they viewed the timeshare as an investment. They also specifically said no profit could be estimated at the time, which to me reinforces the view that they did not enter this arrangement for investment reasons or were persuaded that the main substance of the product was anything other than for holidays. By contrast, they mention being attracted by 'excellent deals for holidays,' potential future holiday savings, and other incentives such as a lower price on the day for the timeshare and the inclusion of a free bonus holiday week. The circumstances also show that Mrs and Mr R's understanding at the time was that they were attending a sales event about holidays. And so, weighing these factors, I think the prospect of future holidays and these incentives to buy the Fractional product 'on the day', for future holidays, were far more influential in their decision than any alleged investment-related marketing.

On balance, I do not think it is clear that any breach of Regulation 14(3), even if there was one, materially influenced their decision to make the purchase. That does not mean they were disinterested in a share of the Allocated Property—this would be unsurprising given the nature of the product—but their own statements do not persuade me that profit potential was a motivating factor. Therefore, I do not think the Supplier's breach of Regulation 14(3) was likely material to their decision.

With all this in mind, I think the evidence is more persuasive that they would have still proceeded with the purchase regardless of any breach. For that reason, I do not consider the credit relationship between Mrs and Mr R and the Lender to have been unfair, even if the Supplier breached Regulation 14(3).

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

Mrs and Mr R say they were not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club 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 Mrs and Mr R sufficient information, in good time, on the various charges they could have been subject to as Fractional Club 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 Mrs and Mr R nor the PR has persuaded me that they

would not have pressed ahead with the purchase had the finer details of the Fractional Club'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 Mrs and Mr R in practice, nor that any such terms led them to behave in a certain way to their detriment. So, 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.

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 credit charge). 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 Mrs and Mr R in arguing that a 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 Mrs and Mr 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 Mrs and Mr R into a credit agreement that cost disproportionately more than it otherwise could have.

I recognise that it's possible 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 noted in my provisional decision, case law on section 140A makes clear that regulatory breaches do not automatically lead to an unfair credit relationship, and that such breaches and any consequences must be considered in the round rather than in a narrow or technical way.

With that being the case, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, I'm not minded to think any such failure is itself a reason to find the credit relationship in question unfair to Mrs and Mr R. I say this for the following reasons.

As I said in my 'side letter' of December 2025, in stark contrast to the facts in Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging this Credit Agreement wasn't high. At £952.20 it was only 5% of the amount borrowed and 7.4% as a proportion of the charge for credit – which is the calculation the Supreme Court used.

Had Mrs and Mr R known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at this level, I'm not currently persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mrs and Mr R wanted the membership and had no obvious means of their own to pay for it. And at such a low level, the impact of commission on the cost of the credit they needed for a timeshare they wanted doesn't strike me as disproportionate. So, I think they would still have taken out the loan to fund their purchase at the Time of Sale had the amount of commission been disclosed.

What's more, 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. As it wasn't acting as an agent of Mrs and Mr 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.

I don't consider it necessary for me to take into account any commission the Supplier might have paid to its sales representatives, or that this should be disclosed or factored into any calculation used to determine unfairness. Even if any such arrangement was in place (and I make no finding in this respect), its disclosure and/or payment would be further removed from any obligations the Supplier might have held, and be even less likely to have an impact on Mrs and Mr R's decision to enter into the Credit Agreement.

Overall, therefore, 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 Mrs and Mr R.

Commission: The Alternative Grounds of Complaint

While I've found that Mrs and Mr R's credit relationship with the Lender wasn't unfair for reasons relating to the commission arrangements, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Mrs and Mr R's complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mrs and Mr R (i.e., secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mrs and Mr R a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think they would still have taken out the loan to fund the purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Conclusion

I am very sorry to have to disappoint Mrs and Mr R. But as I have comprehensively explained, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim.

I'm also not persuaded that the Lender was party to a credit relationship with Mrs and Mr R under the Credit Agreement that was unfair for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate them.

My final decision

I do not uphold this complaint against Shawbrook Bank Limited.

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

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

Michael Campbell
Ombudsman