

The complaint

Mr and Mrs M's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by (1) being party to unfair credit relationships 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 M were trial members of a timeshare provider (the 'Supplier') – having previously purchased a trial membership. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – points in which they purchased on the dates below:

- 910 fractional points on 23 March 2017 for £13,565 ('Purchase Agreement 1').
- 1,180 fractional points on 7 November 2017 for £7,257 – having traded in their previous membership ('Purchase Agreement 2').

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

As Mr and Mrs M's complaint concerns both purchases, 23 March 2017 ('Time of Sale 1') and 7 November 2017 ('Time of Sale 2') are the 'Times of Sale' for the purposes of my final decision.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs M more than just holiday rights. It also included a share in the net sale proceeds of a property named on the relevant purchase agreement (which I'll refer to as the 'Allocated Properties') after the end of their membership term.

Mr and Mrs M paid for their fractional points by taking the following amounts of finance of from the Lender:

- £16,844 on 23 March 2017 – including the consolidation of the loan taken to fund their trial membership ('Credit Agreement 1').
- £23,402 on 7 November 2017 – including the consolidation of Credit Agreement 1 ('Credit Agreement 2').

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

Mr and Mrs M – using a professional representative (the 'PR') – wrote to the Lender on 17 January 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 M's concerns as Section 75 claims and issued its response on 1 March 2022, explaining why it was not prepared to accept these.

The complaint was then referred to the Financial Ombudsman Service. While the complaint

was awaiting assessment by one of our Investigators, the Lender issued a final response letter, rejecting it on every ground.

The complaint was subsequently assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

The Lender 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 17 November 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 Times 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 Times of Sale because Mr and Mrs M were:

1. Told that they had purchased an investment that would "considerably appreciate in value".
2. Promised a considerable return on their investment because they were told that they would own a share in a property that would considerably increase in value.
3. Told that they could sell their Fractional Club membership to the Supplier or easily to third parties at a profit.
4. Made to believe that they would have access to "the holiday apartment" at any time all year round.

However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like

nothing more than an honestly held opinion as there isn't any accompanying evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

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

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

Section 140A of the CCA: did the Lender participate in one or more unfair credit relationships?

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Times of Sale. But there are other aspects of the sales processes 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 relationships between Mr and Mrs M and the Lender along with all the circumstances of the complaint, I don't think the credit relationships between them were 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 Times of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Times 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 Times of Sale;
4. The inherent probabilities of the sales given their circumstances; and, when relevant
5. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the relevant credit relationships between Mr and Mrs M and the Lender.

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

Mr and Mrs M's complaint about the Lender being party to unfair credit relationships 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 M. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs M was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationships with the Lender were 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 Agreements were arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreements. However, it looks to me like Mr and Mrs M knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Fractional Club membership. And as none of the lending looks like it was unaffordable for them, even if the one or more of the Credit Agreements were 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 M experiencing a financial loss – such that I can say that the credit relationships in question were 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 loans weren't arranged properly.

The PR also says that there were one or more unfair contract terms in the Purchase Agreements. But as I can't see that any such terms were operated unfairly against Mr and Mrs M 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 Mr and Mrs M may have felt weary after sales processes that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentations that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. They were also given 14-day cooling off periods and they have not provided a credible explanation for why they did not cancel their memberships during that time. Moreover, they went on to upgrade their membership – which I find difficult to understand if the reason they went ahead with the purchases in question was because they were pressured into them. And with all that being the case, there is insufficient evidence to demonstrate that Mr and Mrs M made the decisions to purchase Fractional Club membership because their ability to exercise choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr and Mrs M's credit relationships with the Lender were 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 relationships with the Lender were unfair to them. And that's the suggestion that Fractional Club 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 M'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 Times 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 Times of Sale – saying, in summary, that Mr and Mrs M were told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

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

Shares in the Allocated Properties clearly constituted investments as they offered Mr and Mrs M the prospect of a financial return – whether or not, like all investments, that was more than what they first put into them. But it’s 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 Mr and Mrs M as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e. a profit) given the facts and circumstances of *this* complaint.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Times 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 Mr and Mrs M, 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 Fractional Club membership as an investment. So, I accept that it’s also possible that Fractional Club membership was marketed and sold to Mr and Mrs M 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.

Were the credit relationships between the Lender and Mr and Mrs M rendered unfair?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Times of Sale, I now need to consider what impact such breaches had on the fairness of the credit relationships between Mr and Mrs M and the Lender under the Credit Agreements and related Purchase Agreements 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 credit relationships between Mr and Mrs M 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 Purchase Agreements and the Credit Agreements is an important consideration.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mr and Mrs M decided to go ahead with their purchases.

The PR has provided a statement from Mr and Mrs M containing their recollections of the Times of Sale. In the statement, Mr and Mrs M do not say that the investment element of Fractional Club membership was the motivation behind their purchases at the Times of Sale.

Recalling their purchase of trial membership from the Supplier, they do say:

“The rep told us that the purchase was an investment as eventually the property would be sold and we would receive a percentage of the sale [...]”.

However, this allegation does not relate to the Times of Sale under consideration in this complaint, and in any event, it is nothing more than a description of how Fractional Club membership worked. It does not explain why, or indeed if, the investment element of Fractional Club membership was the motivation behind the purchases at the Times of Sale.

Recalling the upgrade purchased at Time of Sale 2, Mr and Mrs M say:

“The only reason we did buy extra points on the one occasion was because they told us that instead of buying into twenty years contract someone had sold their contract with just seventeen years on it and we could purchase it for a ‘special’ price if we bought it on the day.”

So, it seems that the motivation for the upgrade was because Mr and Mrs M understood it would shorten their membership term – whether that was accurate or not – and not the investment element of Fractional Club membership.

And in the absence of compelling testimony from Mr and Mrs M that the investment element of Fractional Club membership was the motivation behind their purchases at the Times of Sale, I'm not persuaded it was.

That doesn't mean they weren't interested in a share in the Allocated Properties. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs M don't persuade me that their purchases were motivated by their shares in the Allocated Properties and the possibility of a profit, I don't think breaches of Regulation 14(3) by the Supplier were likely to have been material to the decisions they ultimately made.

On balance, therefore, even if the Supplier had marketed or sold Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs M's decisions to purchase Fractional Club membership at the Times of Sale were motivated by the prospect of a financial gain (i.e., a profit). And for that reason, I do not think the credit relationships between Mr and Mrs M and the Lender were unfair to them 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 M's Section 75 claims, and I was not persuaded that the Lender was party to credit relationships with them under the Credit Agreements that were 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.

The legal and regulatory context

In my PD, I explained that the legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it was not necessary to set out that context in detail. But, following my PD, I would add that the following regulatory rules/guidance are also relevant:

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.

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 relationships between Mr and Mrs M and the Lender were unfair. In particular, the PR has provided further comments in relation to whether Fractional Club membership was sold to them as an investment at the Times of Sale. It's now also argued for the first time that a contradiction in the purchasing documentation and the payment of commission by the Lender to the Supplier led to unfair credit relationships.

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 unfair credit relationships?

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

I set out in my PD that to uphold Mr and Mrs M'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 Agreements and Credit Agreements.

The PR says "it is not unreasonable to conclude that similar representations were made across multiple sales, given that the supplier's marketing materials and training guidance were standardised." It therefore argues that Mr and Mrs M's comments regarding the sale of the trial membership are relevant to both the Times of Sale I'm considering in this complaint.

Even if I were to agree with the PR, when recalling the sale of the trial membership, Mr and Mrs M have simply provided a description of how Fractional Club membership worked. They do not explain why, or indeed if, the investment element of Fractional Club membership was the motivation behind the purchases at the Times of Sale. And ultimately, having carefully considered their testimony, I remain unpersuaded that any breach of Regulation 14(3) was material to their purchasing decisions.

The PR said that as the Supplier's pricing sheets refer to the "Unit Share %" provided under Mr and Mrs M's Fractional Club membership, this shows the investment element was an "important part" of the sales processes and "played quite an important role" in their purchasing decisions. But I don't agree. As I explained in my PD, it is not in dispute that Fractional Club membership contained an investment element and it's possible that it was marketed or sold to Mr and Mrs M as an investment (although I have made no finding on this). However, the simple fact that their shares in the Allocated Properties were recorded on the pricing sheets does not offer an insight into their motivation for their purchases.

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 Fractional Club membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr and Mrs M's decisions to make the purchases were motivated by the prospect of a financial gain. And for that reason, I still don't think the credit relationships between Mr and Mrs M and the Lender were unfair to them.

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

The PR says that payments of commission from the Lender to the Supplier at the Times of Sale should lead me to uphold this complaint because, simply put, information in relation to those payments went undisclosed at the Times 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 M in arguing that their credit relationships with the Lender were 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 M, nor have I seen anything that persuades me that the commission arrangements between them gave the Supplier a choice over the interest rate that led them into credit agreements that cost disproportionately more than they 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 Times 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 Times of Sale, it's for the reasons set out below that I don't think any such failure is itself a reason to find the credit relationships in question unfair to Mr and Mrs M.

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 Time of Sale 1. 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 relating to Credit Agreement 1 unfair to Mr and Mrs M.

And also contrary to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging Credit Agreement 2 wasn't high. At £1,170.10, it was only 5% of the amount borrowed and even less than that (4.6%) as a proportion of the charge for credit. So, had Mr and Mrs M known at Time of Sale 2 that the Supplier was going to be paid a flat rate of commission at that level, I'm not persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payment at that

time. After all, Mr and Mrs M wanted the Fractional Club upgrade 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 Time of Sale 2 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 Agreements. And as it wasn't acting as an agent of Mr and Mrs M but as the supplier of contractual rights they obtained under the Purchase Agreements, the transactions don't strike me as ones with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreements and thus a fiduciary duty.

Overall, therefore, I'm not persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationships unfair to Mr and Mrs M.

I will also address the PR's point regarding the apparent ambiguity in the proposed sale date of the Allocated Property under Purchase Agreement 2. The PR suggests that a delayed sale date could lead to an unfairness to Mr and Mrs M in the future, as any delay could mean a delay in the realisation of their share in the Allocated Property.

It does appear that the proposed date for the commencement of the sales process of the Allocated Property, as set out on the owners' certificate, is 31 December 2033. The same date will have been set out under point 1 of the Members Declaration, which will have been initialled and signed as being read by Mr and Mrs M. This date indicates that the membership has a term of 16 years. The ambiguity identified by the PR is that in the Information Statement provided as part of the purchase documentation it will have said the following:

"The Owing Company will retain such Allocated Property until the automatic sale date in **19 years time** or such later date as is specified in the Rules or the Fractional Rights Certificate."

[my emphasis]

It seems clear to me that the commencement date for the start of the sales process is 31 December 2033. This actual date is repeated in the sales documentation as I've set out above. So, I can't see that this is a reason to find the credit relationship relating to Credit Agreement 2 unfair and uphold this complaint.

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 relationships between Mr and Mrs M and the Lender under the Credit Agreements and related Purchase Agreements were unfair to them. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

Commission: the alternative grounds of complaint

While I've found that the credit relationship relating to Credit Agreement 2 wasn't unfair to Mr

and Mrs M for reasons relating to the commission arrangements between the Lender and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to their 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 Mr and Mrs M (i.e. secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at Time of Sale 2 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 Mr and Mrs M 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 to them. And while it's possible that the Lender failed to follow the regulatory guidance in place at Time of Sale 2 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 their purchase at Time of Sale 2 had there been more adequate disclosure of the commission arrangements that applied at that time.

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 M's Section 75 claims, and I am not persuaded that the Lender was party to credit relationships with them under the Credit Agreements that were 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 M'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 M to accept or reject my decision before 12 February 2026.

Alex Salton
Ombudsman