DRN-6093794

The complaint

Mr T'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 him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

What happened

In 2011, Mr and Mrs T purchased a trial membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier'). The following year, they purchased full membership of the Fractional Club. And the year after that, they upgraded their Fractional Club membership.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs T more than just holiday rights. It also included a share in the net sale proceeds of a property named on their purchase agreement after the end of their membership term. But members had no preferential rights to stay in the named property or to use it in any other way.

Mr and Mrs T purchased membership of another type of timeshare (the 'Signature Collection') from the Supplier on 11 January 2016 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,540 fractional points at a cost of £29,129 (the 'Purchase Agreement'). But after trading in their existing timeshare membership, they ended up paying £15,999 for their Signature Collection membership.

Like the Fractional Club, Signature Collection membership was asset backed, and included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property'). However, the Signature Collection differed from the Fractional Club in that members had preferential rights to stay in their allocated property, and the properties were ostensibly more luxurious.

Mr and Mrs T paid for their Signature Collection membership by taking finance of £15,999 from the Lender in Mr T's name (the 'Credit Agreement').

In 2017, Mr and Mrs T purchased Fractional Club membership again. In 2018, they upgraded their Signature Collection membership. And in 2019, they considered further upgrading their Signature Collection membership; however, they cancelled this purchase within the cooling-off period.

I am only considering the Time of Sale in this complaint. As the finance used for this purchase was in Mr T's sole name, only he is eligible to bring this complaint. Hereafter, I will only refer to Mr T unless it's important to differentiate between him and Mrs T.

Mr T did complain about the Fractional Club upgrade in 2013 but has since withdrawn this complaint. The 2017 Fractional Club purchase is the subject of a separate complaint. He is not complaining about any other sales, which I have included for background information only.

Mr T – using a professional representative (the 'PR') – wrote to the Lender on 20 October 2021 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving him a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
3. The amount of commission paid by the Lender to the Supplier not being disclosed.

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

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

1. Told him that Signature Collection membership had a guaranteed end date when that was not true.
2. Told him that the membership was a "mechanism for property ownership" when that was not true.
3. Told him that the membership was an "investment", when that was not true because it is worthless.
4. Told him that the membership offered improved access to exclusive resorts and a higher standard of accommodation when that was not true.
5. Told him that fractional points would sell out given their desirability and were being offered at a discount only for one day when neither was true.

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

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

The Letter of Complaint set out several reasons why Mr T says that the credit relationship between him and the Lender was unfair to him under Section 140A of the CCA. They include the following:

1. The Signature Collection membership was marketed and sold to him as an investment in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').
2. Mr T was pressured into the purchase by the Supplier.
3. The decision to lend was irresponsible because the Lender did not carry out a sound and proper creditworthiness assessment.
4. Mr T was not given a choice of finance provider, nor the opportunity to arrange his own finance.
5. Mr T was not provided with the "key information" required under Regulation 12 of the Timeshare Regulations, including that the annual management charges could increase, which he needed to make an informed decision about whether to enter into the contract.
6. The contractual terms setting out (i) the duration of his membership and/or (ii) the obligation to pay annual management charges for its duration were unfair contract terms under the Consumer Rights Act 2015 ('CRA').[1]

[1] The PR referred to The Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR') when making this argument in the Letter of Complaint. But given the UTCCR was replaced by the CRA before the Time of Sale, I will take into account the CRA when considering this argument.

The Lender dealt with Mr T's concerns as a complaint and issued its final response letter on 15 December 2021, rejecting it on every ground.

The PR, on behalf of Mr T, referred the complaint to the Financial Ombudsman Service on 14 February 2022. On 19 December 2023, the PR sent us a statement dated 16 June 2020 from Mr T (the 'Client Statement'). I will refer to the Client Statement throughout this decision.

Mr T's complaint was subsequently assessed by one of our Investigators 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 27 August 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.
>
> But 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**
>
> As both sides may already know, a claim against the Lender under Section 75 essentially mirrors the claim Mr T could make against the Supplier. Certain conditions must be met if this protection is engaged – which are set out in the CCA. The Lender does not dispute that the relevant conditions are met in this complaint, and I'm satisfied that they are.
>
> This part of the complaint was made for several reasons that I set out at the start of this decision. They include the suggestion that the Signature Collection membership was misrepresented by the Supplier because Mr T was told it had a guaranteed end date when that was not true.
>
> But having reviewed the Supplier's sales and training material for the Signature Collection at the relevant time, there is no indication that it instructed or encouraged its sales staff to tell prospective members, including Mr T, that the sale of an allocated property was guaranteed at the end of a membership term. And I have seen nothing in the contemporaneous paperwork given to Mr T prior to his purchase that stated this either.
>
> I also note this allegation was only made in the Letter of Complaint and does not feature in the Client Statement.
>
> Therefore, on balance, although I do not doubt that the Supplier told Mr T that the Allocated Property would be sold at the end of his membership term, given this formed part of the contract, I am not persuaded it told Mr T this was guaranteed to

take place on a set future date.

The PR also suggests that the membership was misrepresented by the Supplier as a "mechanism for property ownership" when that was not true. However, telling prospective members that they were buying a fraction or share of one of the Supplier's properties was not untrue. Mr T's share in the Allocated Property was clearly a purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanisms used to give him that interest, it does not change the fact that he acquired such an interest.

Similarly, I am not persuaded that, even if at the Time of Sale, the Supplier said the membership was an investment and Mr T would receive a share of the proceeds from the sale of the Allocated Property, this would have been a false statement of fact. The purchase clearly contained an investment element, as I'll explain in more detail later in this provisional decision. And while Mr T was not named on the property deed, he had a contractual right to receive a share of the proceeds from the sale of the Allocated Property.

As for the rest of the Supplier's alleged pre-contractual misrepresentations, while I recognise that Mr T has concerns about the way in which the Signature Collection membership was sold, he has not persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for the other reasons he alleges. And I say that because limited evidence has been provided to support the allegations made in the Letter of Complaint, such as what exactly he was told, by whom, and in what context. I also note that Mr T didn't raise such allegations in the Client Statement.

As there's nothing else on file that persuades me there were any false statements of existing fact made to Mr T by the Supplier at the Time of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reasons Mr T alleges.

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

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

I have already explained why I am not persuaded that the contract entered into by Mr T was misrepresented by the Supplier in a way that makes for a successful claim under Section 75 of the CCA and outcome in this complaint. But Mr T also says that the credit relationship between him and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales processes at the Time of Sale that he has concerns about. It is those concerns that I explore here.

I have considered the entirety of the credit relationship between Mr T and the Lender, along with all the circumstances of the complaint, and I do not 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 Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale;

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; and
4. The inherent probabilities of the sale given its circumstances.

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

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

Mr T's complaint about the Lender being party to an unfair credit relationship was also made for several reasons, which I set out at the start of this decision.

The PR says that the right checks weren't carried out before the Lender lent to Mr T. 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 T was actually unaffordable, before also concluding that he lost out as a result, and then consider whether the credit relationship with the Lender was unfair to him for this reason. Again, from the information provided, I am not satisfied that the lending was unaffordable for Mr T. If there is any further information on this (or any other points raised in this provisional decision) that Mr T wishes to provide, I would invite him to do so in response to this provisional decision.

The PR also says Mr T was not given any choice of finance provider. However, he funded his Fractional Club trial membership through a loan with a different lender. So, it seems likely that at the Time of Sale he was aware he could use a different finance provider if he wished. Further, beyond the bare allegation in the Letter of Complaint, I have not seen anything to suggest that Mr T was interested in arranging his own finance at the Time of Sale, bearing in mind this would likely involve additional administration and effort on his part. Therefore, even if Mr T was not provided with the opportunity to arrange his own finance, I am not persuaded he has suffered any detriment as a result.

Mr T says that he was pressured by the Supplier into purchasing Signature Collection membership at the Time of Sale. I acknowledge that he may have felt weary after a sales process that went on for a long time. But he says little about what was said and/or done by the Supplier during the sales presentation that made him feel as if he had no choice but to purchase the membership when he simply did not want to. He was also given a 14-day cooling-off period and has not provided a credible explanation for why he did not cancel his purchase during this, especially as in the Client Statement he explained that he cancelled his 2019 purchase within the cooling-off period because he was subject to a "high-pressure sales meeting". Moreover, he went on to upgrade his Signature Collection membership – which I find difficult to understand if the only reason he went ahead with the purchase in question was because he was pressured into doing so. And with all of that being the case, there is insufficient evidence to demonstrate that Mr T decided to make the purchase because his ability to decide was significantly impaired by pressure from the Supplier.

I'm not persuaded, therefore, that Mr T's credit relationship with the Lender was rendered unfair to him under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why he says the credit relationship with

the Lender was unfair to him. And that's the suggestion that the Signature Collection membership was marketed and sold to him as an investment in breach of the prohibition against selling timeshares in that way.

Was the Signature Collection membership marketed and sold at the Time of Sale as an investment in breach of Regulation 14(3) of the Timeshare Regulations?

The Lender does not dispute, and I am satisfied, that the Signature Collection membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling membership of the Signature Collection 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. So, that is what I have considered next.

The term 'investment' is not defined in the Timeshare Regulations. In *Shawbrook & BPF v FOS*, the parties agreed that, 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" at [56]. I will use the same definition.

Mr T's share in the Allocated Property clearly, in my view, constituted an investment as it offered him the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But the fact that Signature Collection membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract <u>as an investment</u>. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

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

To conclude, therefore, that the Signature Collection membership was marketed or sold to Mr T 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 this to him as an investment, i.e. told him or led him to believe that the Signature Collection membership offered him 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 Signature Collection membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of Regulation 14(3) of the Timeshare Regulations.

On the one hand, it is likely that the Supplier made efforts to avoid specifically describing membership of the Signature Collection as an 'investment' or quantifying

to prospective purchasers, such as Mr T, 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. While not all the contemporaneous paperwork from Mr T's Signature Collection purchase has been provided, based on what we've seen in other complaints with similar circumstances, it's likely this would have included disclaimers which stated that the membership was not sold to Mr T as an investment. So, it's *possible* that the membership wasn't marketed or sold to him as an investment in breach of Regulation 14(3).

On the other hand, I acknowledge that the Supplier's training material left open the possibility that the sales representative may have positioned the membership as an investment. So, I accept that it's equally possible that the Signature Collection membership was marketed and sold to Mr T 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 is 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 Mr T rendered unfair to him?

As the Supreme Court's judgment in *Plevin* makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

And in light of what the courts had to say in *Carney* and *Kerrigan,* it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr T and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him to enter into the Purchase Agreement and Credit Agreement is an important consideration.

In the Client Statement, Mr T provided his recollections of why he purchased Signature Collection membership:

> "On the 11th January 2016, we purchased a further timeshare with [the Supplier], whilst using our timeshare. We were invited to attend a meeting with representatives from the [Supplier], in which they discussed a new form of luxury timeshare available to members of the [Supplier] known as the Signature Collection. This was sold to us on the basis that we were able to purchase a specific property that would be available to use for one specific week a year. This was sold to us as being a luxury product and an investment that would prove profitable in future years, and hence we were convinced into purchasing [the Signature Collection membership]".

So, Mr T says that the Signature Collection membership was sold to him as a more luxurious product than the Fractional Club membership he already held. And that the ability to stay in the Allocated Property one week a year – which wasn't possible as a member of the Fractional Club – was also a key selling point. Further, I have seen that Mr and Mrs T did in fact use the week in 2017 and 2018, before they stopped using their timeshare membership in 2019.

Mr T does say he was told that Signature Collection was "an investment that would

prove profitable in future years". He has said similar things in relation to some of the other purchases that he made and, from what I know about the way in which the Supplier would have likely positioned those other memberships, I think it is possible they were marketed to him as investment products. However, his memories of what happened at the Time of Sale are different. With respect to some of the other sales, he gives no explanation for the purchase apart from the possible investment element, whereas with the Signature Collection membership, Mr T has also talked about the holidays he was entitled to take. So, it seems he viewed this purchase differently and the supposed luxury that Signature Collection membership offered and the ability to stay at the Allocated Property one week a year were important to him. Mr T also doesn't provide further context around why he found the investment element of the timeshare so appealing.

The Lender has provided the Supplier's notes from the Time of Sale. With regard to the Signature Collection purchase, these say:

> "buying it for usage, their 2 sons and respective partners are star[t]ing to use and enjoy their membership, definitely planning to use it in 2017. cnx [cancelled] last purchase due to high amount of interest incurred. went through all that in detail and showed them how to reduce it by overpaying. Mrs was very pleased to hear that, intend to pay over £200 extra in about a year's time when current loan will be paid"

Any investment motivation is absent from the sales notes. But that is not material as I would not expect the Supplier to have recorded this, given that selling and marketing the membership as an investment was prohibited.

That said, another reason for the purchase is present – the use of the timeshare by Mr T's sons. The sales notes explain that Mr T's sons had been using their parents' membership and planned to continue doing so the following year.

I have carefully considered the available evidence. Having done so, it seems to me that the investment element of the Signature Collection membership was not a key driver in Mr T's purchasing decision. As I've said, Signature Collection differed from Fractional Club membership in that there were reputedly more luxurious holidays on offer, as well as the ability to stay at the Allocated Property one week a year. And Mr T referred to both these particular features of Signature Collection membership within the Client Statement when explaining how the product was sold to him. As I've explained, the investment element of Fractional Club membership appears to have been a secondary consideration.

On balance, I'm persuaded that when making his purchasing decision, Mr T placed more weight on the supposed higher standard of holidays, along with the ability to stay in the Allocated Property – especially as his sons and their partners had plans to make use of the membership. And in the absence of compelling testimony from Mr T that the driver for him purchasing the Signature Collection membership was its inherent investment element, on balance I am not persuaded that his decision to purchase at the Time of Sale was motivated by the prospect of a financial gain (i.e. a profit), even if the Supplier did market or sell the contract as an investment in breach of Regulation 14(3) of the Timeshare Regulations. On the contrary, I think the evidence suggests he would have pressed ahead with his purchase, because of the perceived increase in luxury and the ability to stay at the Allocated Property, whether or not there were breaches of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr T and the Lender was unfair to him, even if the Supplier breached Regulation 14(3).

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

It is clear from the submissions of everyone involved in this complaint that there was a lot of information passed between the Supplier and Mr T when he purchased the Signature Collection membership at the Time of Sale. But the PR says that the Supplier failed to provide Mr T with all the information he needed to make an informed decision.

The PR says that Mr T was not provided with the "key information" required under Regulation 12 of the Timeshare Regulations, including that the annual management charges could increase, which he needed to make an informed decision about whether to enter into the contract.

The PR also says that the contractual terms relating to the duration of Mr T's membership, along with the obligation to pay management fees for that period, were unfair contract terms under the CRA.

One of the main aims of the Timeshare Regulations and the CRA was to enable consumers to understand the financial implications of their purchase so that they were/are put in the position to make an informed decision. And if a supplier's disclosure and/or the terms of a contract did not recognise and reflect that aim, and the consumer ultimately lost out or almost certainly stands to lose out from having entered into a contract whose financial implications they didn't fully understand at the time of contracting, that may lead to the Timeshare Regulations and the CRA being breached, and, potentially the credit agreement being found to be unfair under Section 140A of the CCA.

However, as I've said before, the Supreme Court made it clear in *Plevin* that it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A of the CCA. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

So, to conclude that a term in the Purchase Agreement rendered the credit relationship between Mr T and the Lender unfair, I'd have to see that the term was unfair under the CRA, and that the term was actually operated against Mr T in practice.

In other words, it's important to consider what real-world consequences, in terms of harm or prejudice to Mr T, have flowed from such a term, because those consequences are relevant to an assessment of unfairness under Section 140A. For example, the judge in *Link Financial* v *Wilson* [2014] EWHC 252 (Ch) attached importance to the question of how an unfair term had been operated in practice: see [46].

Having considered everything that has been submitted, it seems unlikely to me that the contract terms cited by the PR have led to any unfairness in the credit relationship between Mr T and the Lender for the purposes of Section 140A of the CCA.

The Information Statement[2] Mr T will have signed at the Time of Sale will have made it clear in Part 1 that membership ran for 19 years. And the Terms and Conditions of the membership set out that the sale date of the Allocated Property could only be delayed for more than two years with the unanimous written consent of all fractional owners, which included Mr T. So, I am not persuaded that the membership terms would be found unfair by a court for the purposes of the CRA, such that they would then play a part in rendering the credit relationship between the Lender and Mr T unfair to him under Section 140A.

The PR says Mr T was not provided with sufficient information about the annual management charges, particularly the possibility that these could increase. But the Information Statement he will have signed at the Time of Sale will have explained that he would be required to pay a management fee each year. And that this was required in order to contribute to the cost of management, repair and maintenance of the Allocated Property. It will have also said the charges would be divided between the fractional owners in proportion to the number of weekly periods they were entitled to use each year. And the charges would be decided annually and would be subject to increase or decrease according to the costs of managing the relevant club. Additionally, it will have explained that the fees would be due annually in advance each year and set out the fees for the first year of membership. In my view, this is reasonable, and it seems likely this was explained to Mr T at the Time of Sale.

It is possible that the Supplier did not give Mr T sufficient information, in good time, on the various charges that could apply as a Signature Collection member in order to satisfy Regulation 12 of the Timeshare Regulations. But even if that was the case, I cannot see that the ongoing costs of the membership was unfair in practice. And I have not seen enough evidence to persuade me that Mr T would not have proceeded with his purchase had the Supplier's disclosure complied with Regulation 12.

At the Time of Sale, Mr T had been a member of one of the Supplier's timeshares for several years, so had some insight into the ongoing costs of membership. And despite this, he still decided to proceed with his purchase at the Time of Sale. No explanation has been provided as to why better cost disclosure would have influenced his decision to proceed with the Signature Collection purchase.

What's more, I cannot see that the relevant terms were actually operated against Mr T in an unfair way.

As I haven't seen anything else to suggest that there are any other reasons why the credit relationship between the Lender and Mr T was unfair to him because of information failings by the Supplier, I'm not persuaded it was.

Section 140A: Conclusion

In conclusion, therefore, given all the facts and circumstances of this complaint, I don't think the credit relationship between the Lender and Mr T was unfair to him for the purposes of Section 140A. And taking everything into account, I think it's fair and reasonable to reject this aspect of the complaint on that basis.

Mr T's commission complaint

[2] I have not seen Mr T's Information Statement from the sale of the Signature Collection membership; however, I have reviewed a sample Information Statement for Signature Collection sales and I am not aware of any reason why Mr T's Information Statement would have differed from this.

> I note that one of Mr T's other concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. The Supreme Court's recent judgment *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33* (*'Johnson, Wrench and Hopcraft'*) clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer-credit brokers. At present, I do not know what, if any, commission was paid by the Lender in relation to the Credit Agreement. So, once I know more, I will finalise my findings on this complaint."

In conclusion, as things stood at the time, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mr T's Section 75 claim, and I was not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA – nor did I see any other reason why it would be fair or reasonable to direct the Lender to compensate him. However, it was necessary to find out more about the commission arrangements at the Time of Sale before finalising my thoughts on the merits of his complaint.

The Lender accepted the PD. The PR did not and provided some further comments and evidence it wished to be considered.

Once the commission information had been received, I communicated how I was not persuaded that Mr T's credit relationship with the Lender was unfair to him for reasons relating to the commission arrangements between it and the Supplier.

In response, the PR confirmed that it would not be challenging my findings on the commission arrangements.

Having received the relevant responses from both parties, I'm now finalising my decision.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4 R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

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's not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

<u>The Consumer Credit Sourcebook ('CONC') – found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance</u>

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

<u>The FCA's Principles</u>

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's 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 in the main relate to the issue of whether the credit relationship between Mr T and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr T as an investment at the Time of Sale.

As outlined in my PD, the PR originally raised various other points of complaint, which I addressed as far as was possible at that time. But it hasn't made any further comments in relation to those in its response to my PD. Indeed, it hasn't said it disagrees with any of my findings about those other points and hasn't challenged my findings about the commission arrangements at the Time of Sale. And since I haven't been provided with anything more in respect of those points by either party, I see no reason to change my conclusions about them. So, I'll focus here on the PR's points raised in response to my PD that I haven't yet addressed.

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

Included in the PR's response to my PD was an oral hearing request along with the offer to produce sworn affidavits. Oral hearings are something that I can direct happen under DISP 3.5.5 R. However, the Financial Ombudsman Service is set up to decide complaints informally and it's for me as the decision maker to determine what evidence I think I need to determine what is a fair and reasonable outcome to a complaint. Having considered everything, I do not think I need to hold an oral hearing to fairly determine this complaint.

This is because both parties have already provided lengthy submissions. In this case, I have statement from Mr T, other evidence, including the documents from the sale, and full submissions from the PR and Lender to decide what I think was most likely to have happened. I'm satisfied I'm able to weigh up what Mr T has said against the available

evidence and arguments to determine what I think happened on the balance of probabilities without the need for an oral hearing. And as it's in everyone's interest to resolve this complaint as soon as possible, to grant a hearing at such a late stage would inevitably prolong the resolution of this case.

I understand that the PR also offers to have Mr T provide a sworn affidavit. But I must remind it that we don't have strict evidential requirements. We aren't expected to decide complaints only after receiving sworn evidence. And our jurisdiction is investigative rather than adversarial. I remain of the view that the information we have on file is enough to cover all the issues I need to consider to reach a fair decision. And as I've considered everything on file, including the specific points raised by the PR as part of its request, I'm of the view that a hearing request and sworn affidavits aren't required.

As I explained in my PD, although I found there was a possibility that the Supplier breached Regulation 14(3) at the Time of Sale, the evidence suggested that when Mr T made his purchasing decision, he placed more weight on the supposed higher standard of holidays, along with the ability to stay in the Allocated Property. So, I wasn't persuaded that the evidence suggested that Mr T purchased Signature Collection membership in whole or in part down to any breach of Regulation 14(3).

The PR has stated that I've been inconsistent with my approach compared to previous decisions issued by this service and has provided examples it feels demonstrates this. But my decision is based on consideration of Mr T's specific circumstances. Each complaint turns on its own facts; an ombudsman's decision on how one timeshare sale occurred does not determine their, or any other ombudsman's, decisions about the facts of other sales at different times to different purchasers.

The PR has also reiterated that the judgment handed down in *Shawbrook & BPF v FOS* asserted that the relevant question in this circumstance is whether the breach of Regulation 14(3) was a material factor in the decision to purchase, not whether it was the only factor or principal one. It feels that the testimony Mr T has provided demonstrates that this was the case. But, as I explained in my PD, I'm not persuaded from the testimony that Mr T has adequately demonstrated that the promise of profit was a motivating factor to his decision to move ahead with the purchase – principal or otherwise.

So, ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr T's purchasing decision.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr T's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mr T and the Lender was unfair to him for this reason.

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 T's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement that was unfair to him 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 him.

My final decision

My final decision is to not uphold Mr T's complaint about Shawbrook Bank Limited for the reasons provided.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 18 February 2026.

Alex Salton
Ombudsman