DRN-6097616

The complaint

Miss 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 her 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

The product at the centre of this complaint is Miss R's membership of a timeshare which I will refer to as the Fractional Club membership. This was purchased on 1 March 2017. Miss R took out a loan for the cost of the Fractional Club membership which was £11,238. This was payable over 120 months at £156.72 per month meaning the total amount to be paid for credit over the term was £18,806 (the APR[1] was 11.9%).

I can see that Miss R purchased this timeshare with her partner. However, the Credit Agreement was only in her name. I'll therefore refer specifically here to Miss R, although I understand her partner was also present throughout the sale.

The Fractional Club membership was a type of product which meant it provided future holidaying rights at the Supplier's group of resorts, based on a points system. Miss R bought 1,200 points. However, the Fractional Club membership was also asset backed, which meant it gave Miss R more than just holidaying rights. It included a share in the net sale proceeds of an Allocated Property named on the Purchase Agreement after this membership term ended, which in this case was in 2032.

Miss R – using a professional representative (the 'PR') – wrote to the Lender on 27 July 2022 (the 'Letter of Complaint') to raise a number of different concerns. The Lender rejected the complaint on every ground. The Lender also said that it had seen no commentary or statement from Miss R herself which either corroborated or helped explain what it said were the PR's common points of complaint.

Miss R wasn't happy that her complaint was rejected by the Lender, so she referred it to the Financial Ombudsman Service. It was assessed by one of our investigators who, having considered the information on file, also rejected the complaint on its merits. Miss 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 25 November 2025 in which I comprehensively set out my reasoning for not upholding the complaint. The PD should be read in conjunction with this final decision. However, 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 7 January 2026 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

[1] APR, or Annual Percentage Rate, is the yearly cost of a loan or credit, expressed as a percentage. It includes the interest rate plus any other mandatory fees, giving a more complete picture of the total cost of borrowing than the interest rate alone.

rendered the credit relationship unfair to Miss R. In fact, there was no commission paid in relation to this case.

I've had a response from Miss R's PR which basically disagrees with my PD. I have read everything said on her behalf with great care. 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. This affords consumers ("debtors") a right of recourse against lenders which provided 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 Miss R was:

1. Told that she had purchased an investment that would appreciate in value when that was not true.

2. Told that she would own a share in a property that would increase in value during the membership term when that was not true.
3. Told she could sell the timeshare back to the resort or easily sell it at a profit when that wasn't true.
4. Made to believe that she would have access to a specific apartment all around the year.

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 an 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 have held.

As for points 3 and 4, while it's possible that Fractional Club membership was misrepresented at the Time of Sale for these reasons, I don't think it's probable. The allegations, as put by the PR, are given none of the colour or context necessary to demonstrating that the Supplier made false statements of existing fact. So, since there are no other specific examples or supporting evidence on file to back up the suggestion that the membership was misrepresented in these ways, I don't think it was.

With all this in mind, whilst I recognise that Miss 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 Miss 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. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements;
4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
5. The inherent probabilities of the sale given its circumstances; and when relevant, any existing unfairness from a related credit agreement.

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

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

Miss R's complaint about the Lender being party to an unfair credit relationship was made for several reasons.

The PR says, for instance, that the right checks weren't carried out before the Lender lent to Miss R. I haven't seen anything to persuade me this 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 Miss R was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship with the Lender was unfair for this reason. Miss R hasn't expanded on why or how the lending was unaffordable and from the information provided, I am not satisfied that the lending was unaffordable for her.

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 Miss R knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Fractional Club membership. As that lending doesn't look like it was unaffordable for her, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so, I can't see why that led to her suffering a financial loss – such that I can say that the credit relationship in question was unfair as a result.

It was also said in the PR's Letter of Complaint that Miss R was made *"to believe that they* [she] *would have access to the holiday's* [sic] *apartment at all times around the year"*. But it's not entirely clear whether these allegations, as put by her PR, are claiming that she thought she would be able to stay at an Allocated Property whenever she wanted, or she thought the availability of general accommodation using her holiday points more broadly, was guaranteed. Miss R refers in her own statement, to a quite different dissatisfaction scenario, in that she says she was told that members of her extended family and friendship group had to be homeowners themselves – and earn a certain salary – to 'qualify' to come on, or to book holidays.

I've seen no other evidence to support this latter allegation, and I do feel this is likely a genuine misunderstanding of the rules on Miss R's part. The Lender also says the reservation history shows Miss R benefitted by using this membership for holidays on 3 occasions between May 2017 -and- June 2018: or 3 holidays in the space of 13-months. I think in any event it's reasonable for me to say that like any holiday accommodation, availability was not unlimited given the higher demand at peak times, like school holidays, for instance, so I accept there may have been occasions where she couldn't book the holiday she wanted.

However, I note Miss R says she doesn't remember reading any of the documentation provided to her at the point of sale. How likely this is I can't be sure of because she seems to have initialled all 16 points on the 'Member's Declaration' and signed other relevant sales documentation in various different places, including a final point which read, *"we have fully read and understand all of the above".* Miss R also confirms that she was given a 14-day cooling off period and I see she signed a declaration to this effect.

Overall, therefore, I don't think that Miss 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 the 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 Miss 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."

The PR says that the Supplier did exactly this at the Time of Sale – saying, in summary, that Miss R was told by the Supplier that Fractional Club membership was the type of investment that would only increase in value. Allegations of this nature are contained within the PR's Letter of Complaint, although not in the client personal statement evidently written by Miss R – her opportunity to provide her own personalised version of what happened.

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 Miss R the prospect of a financial return – whether or not, like all investments, that was more than what she 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 membership was marketed or sold to Miss 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 am familiar with the documentation and processes used by the Supplier during these types of sale. 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 Miss 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 Miss 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. 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 said that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach could have had on the fairness of the credit relationship between Miss R and the Lender under the Credit Agreement and related Purchase Agreement as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Miss R and the Lender that was unfair and warranted relief as a result, then whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

I've thought very carefully about what motivated Miss R to purchase the Fractional Club membership, considering all of the available evidence. Having done so, I do not think the prospect of a financial gain from this membership was an important and motivating factor when she decided to go ahead with this purchase.

I think it's first relevant to point out that Miss R's PR Letter of Complaint was brought in July 2022. She later added a client personal statement describing her own recollections of these events. This statement was undated, although I think I can safely say it was added *after* a response from the Lender which was in March 2024, and also probably *after* May 2024 when the Lender sent our Service a pro-forma response. Both these documents refer to there being no personal statement from Miss R available.

So, I think this statement Miss R wrote was most likely made at least seven years after the actual sale. Her statement is also relatively short, but more so, I think there are substantial differences between the PR's suite of allegations and Miss R's own account, with certain specific and important allegations made in the former yet not mentioned at all in the latter.

In so far as any allegation of investment related marketing carried out by the Supplier during the sale is concerned, the PR says, *"they were* [sic] *told they had purchased an investment which would appreciate in value."* However, there was also no further or descriptive detail underpinning these allegations within the Letter of Complaint. Importantly, I don't think these allegations are reflected or reinforced at all by Miss R's own memories of the sale, as set out in her statement. The vast majority of her descriptive points in her short statement simply

refer to the circumstances and lead-up of how she came to buy the timeshare. She also basically explains her understanding of the Fractional product and how the Allocated Property would eventually be sold at a future point in time.

The remainder of her client personal statement deals with some of the holiday and booking issues I've referred to above and her interest in taking holidays. But there's no meaningful allegation from Miss R about making this purchase based on any type of investment hope, or for any reasons of profit or gain.

As I've already explained, the fact that Miss R's membership did include an investment element didn't contravene the prohibition found in Regulation 14(3). And it seems much more likely to me that, given all these circumstances, Miss R was keen and motivated by the type of holidays provided by the Supplier. She herself refers to the accommodation on offer as being of a high standard and I think her wider narrative (in her statement) speaks to a desire to holiday with her partner, close family members, and friends. I've also noted that the sale came with certain added monetary and gift incentives, likely offered to Miss R to make the Fractional Club purchase 'on the day'.

I was also provided with contemporaneous notes evidently from the sale time itself which confirm these likely purchasing motivations; they describe Miss R's aspirations to take some holidays abroad after not having done so for a while.

With all this in mind, I do not think the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Miss R decided to go ahead with her purchase in March 2017. I don't think the evidence supports this - I think the evidence is much more persuasive that she would have pressed ahead with the March 2017 purchase whether or not there had been a breach of Regulation 14(3).

Of course, this doesn't mean she wasn't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But I'm afraid Miss R doesn't persuade me that the purchase was motivated by the share in the Allocated Property and the possibility of a profit.

I therefore don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision Miss R ultimately made. On this basis, I therefore don't think the credit relationship between Miss R and Shawbrook Bank Limited was unfair.

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

Miss R says she was not given sufficient information at the Time of Sale by the Supplier about some of 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 Miss R sufficient information, in good time, on the various charges she could have been subject to as a Fractional Club member 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.

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 Miss R in practice, nor that any such terms led her to behave in a certain way to her detriment. So, with that being the case, 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.

Responses to my PD

I received a response to my PD but nothing regarding the later commission-related 'side letter'.

The PR has highlighted under Section 140B (9) of the CCA, the burden of proof falls on the Lender to disprove the allegation that its relationship with Miss R was unfair. I agree that this is correct, placing a burden on lenders during the process of litigation. That does not mean, though, that the Lender – or I – should take a claim at face value. There remains an onus on Miss R to provide some evidence for the claim she is making, despite the overall burden of proof resting with the Lender, as was set out in the judgment in *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34 at paragraph 40. I also remind both parties that it is my role to make findings on what I consider to be fair and reasonable in all the circumstances of any given complaint.

I'm also satisfied that, where appropriate, I have applied the law and the various rules correctly. I previously told both parties in my PD about the overall legal and regulatory context that I think is relevant to this complaint. The PR now objects to the approach I've taken, believing that I have detracted from the judgment in *Shawbrook & BPF v FOS*[2] and the case law that contributed to it, by requiring Miss R to have been primarily or mainly motivated by the investment element in order to uphold the complaint. But I did not make such a finding. I basically said that, in my view, Miss R was motivated by the holiday options offered by the Supplier – and this was a factor in my overall conclusion. In light of all the available evidence I said that she would, on balance, have pressed ahead with the purchase of the membership even if there had been a breach of Regulation 14(3). So, for the reasons I have already set out, I still do not think that any breach of Regulation 14(3), if indeed there was one, was material to Miss R's decision to purchase this membership. The evidence is persuasive that she would have made the purchase, nonetheless.

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.

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[2] *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS').

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 Miss 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.

In stark contrast to the facts of Mr Johnson's case, as I understand it, no payment between the Lender and the Supplier, such as a commission, was payable when the Credit Agreement was arranged at the Time of Sale in Miss R's situation. 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 persuaded that the commercial 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 Miss R.

Overall, therefore, I'm not persuaded that a commission arrangement between the Supplier and the Lender rendered the credit relationship unfair.

Conclusion

I am very sorry to have to disappoint Miss 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.

Also, I am not persuaded that the Lender was party to a credit relationship with Miss 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 her.

My final decision

I do not uphold this complaint against Shawbrook Bank Limited.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 24 February 2026.

Michael Campbell
Ombudsman