DRN-6110546

## The complaint

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

## Background to the complaint

Mr and Mrs M were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 26 February 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 4,000 fractional points at a cost of £4,400 (the 'Purchase Agreement').

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 Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr and Mrs M paid for their Fractional Club membership by taking finance of £4,400 from Shawbrook (the 'Credit Agreement').

Mr and Mrs M – using a professional representative (the 'PR') – wrote to Shawbrook on 25 October 2023 (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.

Shawbrook dealt with Mr and Mrs M's concerns as a complaint and issued its final response letter on 15 November 2023, rejecting it on every ground.

Mr and Mrs M then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, recommended that the complaint be upheld on its merits.

The Investigator thought that the Supplier had marketed and sold Fractional Club membership as an investment to Mr and Mrs M at the Time of Sale in breach of Regulation 14(3) of the Timeshare Regulations. And given the impact of that breach on their purchasing decision, the Investigator concluded that the credit relationship between Shawbrook and Mr and Mrs M was rendered unfair to them for the purposes of Section 140A of the CCA.

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

As my initial conclusions differed from those of our Investigator, I issued a provisional decision that explained to the parties why I didn't intend to uphold Mr and Mrs M's complaint. I said:

> I have considered all the available evidence and arguments to decide what is fair and

reasonable in the circumstances of this complaint. And having done that, I do not currently think this complaint should be upheld.

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

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

As both sides may already know, a claim against Shawbrook under Section 75 essentially mirrors the claim Mr and Mrs M could make against the Supplier. Certain conditions must be met if this protection is engaged – which are set out in the CCA. Shawbrook does not dispute that the relevant conditions are met in this complaint and I'm satisfied that they are.

However, there are certain time limits that apply – and that I think mean Mr and Mrs M's claim would've been time-barred.

The Limitation Act 1980 sets out limitation periods, or time limits, for bringing various types of legal claim. For a claim based on contract, it's not generally possible to start court action more than six years after the cause of action arose. If a claim is brought too late, the respondent is likely to have a complete defence to the claim on that basis.

For claims relating to misrepresentation, the time limit would typically be six years from the date the claimant suffers damage as a result of the misrepresentation. For example, entering into a contract – and incurring liabilities – when they would otherwise not have done.

Mr and Mrs M's claim under Section 75 is that but for the Supplier's various alleged misrepresentations, they wouldn't have entered into the Purchase Agreement (and, therefore, the Credit Agreement). So it is the date on which they entered into those agreements that their cause of action arose, meaning they had six years from that date within which to bring this claim.

Mr and Mrs M entered into the Purchase Agreement and Credit Agreement on 26 February 2015. They raised their claim under Section 75 within the Letter of Complaint dated 25 October 2023 – outside of the six-year period. That being the case, I don't think Shawbrook acted unfairly or unreasonably in declining the claim. However, I have considered whether these alleged misrepresentations could have been something that caused an unfair credit relationship later in this decision.

## Section 75 of the CCA: the Supplier's Breach of Contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, Shawbrook is also liable.

I've gone on to consider whether there would be any additional time within which Mr and Mrs M could raise a claim under Section 75 for breach of contract, given that their cause of action may have accrued in a different way and therefore at a different point in time.

While not explicitly referenced as such in the Letter of Complaint, part of Mr and Mrs M's claim could reasonably be interpreted as an allegation of a breach of contract by the Supplier. When saying that they were told that their "holiday accommodation would be secured for the term of the contract" (when, presumably, they feel it was not), I take this to mean that they could not holiday where and when they wanted to. That suggests to me that they consider the Supplier was not living up to its end of the bargain, and had breached the Purchase Agreement. Their cause of action would therefore accrue when any such breach occurred, i.e. when they were unable to holiday either when or where they wanted.

Mr and Mrs M haven't provided us with the dates of their attempts to book holidays that ended up falling short of their expectations. So it is hard for me to ascertain when their cause of action arose. But even accepting that this claim was made in time, I don't think it would've been unreasonable for Shawbrook to decline it.

I say this because the evidence I've seen so far doesn't persuade me that the Supplier breached the terms of the Purchase Agreement. In addition to the vague nature of the allegations as I've described above, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork signed by Mr and Mrs M states that the availability of holidays was subject to demand. Even if I accept that they may not have been able to take certain holidays, I don't think this necessarily amounts to a breach of the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think Shawbrook is liable to pay Mr and Mrs M any compensation for a breach of contract by the Supplier. And with that being the case, I do not think Shawbrook acted unfairly or unreasonably in relation to this aspect of the complaint either.

**Section 140A of the CCA: did Shawbrook 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.

The PR says, for instance, that:

1. Mr and Mrs M were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale; and
2. Fractional Club membership was marketed and sold as investment in breach of a prohibition on doing so.

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

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Time of Sale, including the

contractual documentation and disclaimers made by the Supplier;
3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
4. The inherent probabilities of the sale given its circumstances; and, when relevant
5. Any existing unfairness from a related credit agreement.

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

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

Mr and Mrs M's complaint about Shawbrook being party to an unfair credit relationship was made for several reasons.

I have firstly considered whether the misrepresentations they allege were made by the Supplier in the context of their Section 75 claim could have caused any unfairness for the purposes of Section 140A.

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

1. Told that their holiday accommodation would be secured for the term of the contract, as they could book from the many options available.
2. Told that they were purchasing an investment that could be sold at a later date for profit.

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).

With regard to point 1, I take the allegation to be that Mr and Mrs M feel they were guaranteed access to holiday accommodation. Couched as a misrepresentation, presumably they found that their access was limited in some way – but there is no further detail underpinning this allegation, either within the Letter of Complaint or Mr and Mrs M's own witness statement, so it is difficult to understand how they felt such an assurance proved false. Some of the sales paperwork signed by Mr and Mrs M states that all accommodation was subject to availability. And I find it highly unlikely that the Supplier would have provided an unqualified guarantee that Mr and Mrs M could avail themselves of any holiday accommodation at any time, when that would in all likelihood never have been possible and in such contradiction to the contractual paperwork.

As for point 2, 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. There are other considerations when it comes to the marketing of the membership as an investment, which I will go on to address below.

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, I do not think this caused any unfairness in Mr and Mrs M's credit relationship with Shawbrook such that it

warrants a remedy.

Turning to the points specifically raised in relation to the potential unfairness of the relationship between Mr and Mrs M and Shawbrook, the PR said in the Letter of Complaint that Mr and Mrs M were "pressured" into purchasing the membership – citing a long sales process and Mr and Mrs M being led to believe that they could not leave the premises until they had agreed to the purchase.

I acknowledge that Mr and Mrs M may have felt weary after a sales process that went on for a long time. But they have not provided any detail as to what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs M made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

The PR also alleged that the Supplier carried on unfair commercial practices which were prohibited under the CPUT Regulations. But given the limited evidence in this complaint, I am not persuaded that anything done or not done by the Supplier was prohibited under the CPUT Regulations.

Overall, therefore, I don't think that Mr and Mrs M's credit relationship with Shawbrook was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR says the credit relationship with Shawbrook was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

<u>The Supplier's alleged breach of Regulation 14(3) of the Timeshare Regulations</u>

Shawbrook 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 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.

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.

A share in the Allocated Property clearly constituted an investment as it 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 it. But it is important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself,

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

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

To conclude, therefore, that Fractional Club membership was marketed or sold to 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 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 Mr and Mrs M, the financial value of their 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 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.

Was the credit relationship between Shawbrook 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 Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr and Mrs M and Shawbrook 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 Mr and Mrs M and Shawbrook that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

To help me decide this point, I've carefully considered what Mr and Mrs M have said in the course of their complaint about how the membership was sold to them and their

motivation for purchasing it.

I would note first of all that the evidence in this respect is quite limited. As noted earlier, within the Letter of Complaint it was said that Mr and Mrs M were told by the Supplier that the purchase of the membership was an investment and could be sold at a later date of a profit. There was no further detail underpinning these statements within the Letter of Complaint, which are rather generic in nature.

When referring the complaint to us, the PR included a statement in Mr and Mrs M's own words. In recalling their purchase of the Fractional Club membership at the centre of this complaint, they said:

> "[The Supplier's representative] *explained that if we purchased 4000 more fractional point*s[,] *we would become gold members which would give us extra benefits whilst still making it an even better investment for the future due been* (sic) *able to get our money back plus extra amount on sale of properties on 31/12/29 after enjoying these extra benefits*."

Mr and Mrs M note the prospect of a return on their investment as a feature of the membership, which – as I've set out above – I accept both that it was and that it may well have been promoted to them by the Supplier in the manner they describe.

What I am deciding here, though, is whether it was material to Mr and Mrs M's decision to purchase the membership. These comments are not as instructive in that respect, given that Mr and Mrs M do not say that this feature is what drew them to the purchase.

Even were I to infer – reasonably – that it was a factor in their decision given its mention within the brief statement, it evidently was not the only one. As Mr and Mrs M allude to, they held an existing membership with the Supplier – one that also included a share in the net sale proceeds of a property – and were acquiring more points through the purchase at the centre of this complaint. They highlight that the level of points they acquired gave them access to "extra benefits" – most significantly, it increased the holiday options available to them. By virtue of being in the "gold" tier of membership, they had access to a higher standard of accommodation, more holidays each year and holidays during peak times.

Mr and Mrs M's motivation to "get to gold level" was also recorded by the Supplier in notes made by its representative at the Time of Sale. And records of their usage show that they went on to utilise the additional points through longer stays in their chosen accommodation than they had been enjoying previously.

Given all of this, I think Mr and Mrs M would always have wanted to proceed to purchase the additional points and obtain access to the higher tier of membership that offered them improved holiday options.

So having taken all of the evidence into account, I do not think the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr and Mrs M decided to go ahead with this purchase. That doesn't mean they weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs M themselves don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs M's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr and Mrs M and Shawbrook was unfair to them even if the Supplier had breached Regulation 14(3).

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

The PR says that Mr and Mrs M were not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership. The PR also says that, because some of the terms of the Purchase Agreement weren't individually negotiated, they were unfair contract terms as were the terms governing the ongoing costs of membership and consequences of non-payment.

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 Mr and Mrs M sufficient information, in good time, on the various charges they could have been subject to as Fractional Club members in order to satisfy the requirements of Regulation 12 of the 2010 Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mr and Mrs M nor the PR have persuaded me that they would not have pressed ahead with their purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mr and Mrs M in practice, nor that any such terms led them to behave in a certain way to their detriment. And 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 even if they could be said to be unfair contract terms, which I make no formal finding on.

## Mr and Mrs M's commission complaint

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

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

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

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

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

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

1. The size of the commission as a proportion of the charge for credit;
2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);
3. The characteristics of the consumer;
4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and
5. Compliance with the regulatory rules.

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

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

I haven't seen anything to suggest that Shawbrook 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 arrangement between them gave the Supplier a choice over the interest rate that led Mr and Mrs M into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that Shawbrook and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But as I've said before, the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision.

Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. And with that being the case, it isn't necessary to make a formal finding on that because, even if Shawbrook and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I don't currently think any such failure is itself a reason to find the credit relationship in question unfair to Mr and Mrs M.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by Shawbrook to the Supplier for arranging the Credit Agreement that Mr and Mrs M entered into wasn't high. At £44, it was only 1% of the amount borrowed and 1.36% as a proportion of the charge for credit. So, had they known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr and Mrs M wanted Fractional Club membership and had no obvious means of their own to pay for it. And at such a low level, the impact of commission on the cost of the credit they needed for a timeshare they wanted doesn't strike me as disproportionate. So, I think they would still have taken out the loan to fund their purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. 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 Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreement and thus a fiduciary duty.

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

**Section 140A: Conclusion**

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Mr and Mrs M and Shawbrook under the Credit Agreement and related Purchase Agreement was unfair to them. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

**Commission: The Alternative Grounds of Complaint**

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

The first ground relates to whether Shawbrook is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from Shawbrook without telling Mr and Mrs M (i.e., secretly). And the second relates to

Shawbrook's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed 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 Shawbrook failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on Shawbrook's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think Mr and Mrs M would still have taken out the loan to fund their purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

In conclusion, given the facts and circumstances of this complaint, I did not think that Shawbrook acted unfairly or unreasonably when it dealt with Mr and Mrs M's Section 75 claim, and I was not persuaded that Shawbrook was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct Shawbrook to compensate them.

Shawbrook responded to the PD and accepted it.

The PR did not respond.

**The legal and regulatory context**

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R 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 is 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.

Having done so, and with no new information or evidence for me to consider in light of my provisional decision, I see no reason to depart from the conclusions reached therein. So this final decision simply confirms my provisional findings, as set out above.

## My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 13 May 2026.

Ben Jennings
**Ombudsman**