

The complaint

Mr and Mrs K say Shawbrook Bank Limited ('Shawbrook') has unfairly declined their claim under section 75 of the Consumer Credit Act 1974 ('CCA'). And they say their creditor-debtor relationship with Shawbrook was unfair to them under section 140A of the CCA.

What happened

In November 2013, Mr and Mrs K purchased a timeshare membership – which I'll call 'Fractional Club' membership – from a timeshare provider (the 'Supplier'). It included 1,820 fractional points. The membership was asset backed – which means it gave Mr and Mrs K more than just holiday rights. It included a share of the net sale proceeds of a property named on the purchase agreement (the 'Allocated Property') after the membership term ended. The Supplier says they 'traded-in' an existing timeshare membership, which left £10,133 to pay. Mr and Mrs K borrowed the full sum from to pay the balance.

In August 2017, Mr and Mrs K – using a professional representative ('PR1') – wrote to Shawbrook (the 'Letter of Claim') to make a claim under section 140A of the CCA. (In April 2018, it wrote to Shawbrook to ask that it consider the claim under section 75 of the CCA instead.) Specifically, the Letter of Claim said:

- The Supplier didn't conduct a proper assessment of Mr and Mrs K's financial position and their ability to repay the loan, which rendered the creditor-debtor relationship unfair to them under section 140A.
- The Supplier applied 'undue' pressure on Mr and Mrs K.
- The Supplier 'breached EU law'.
- The Supplier made two misrepresentations: first, it told Mr and Mrs K that the only way they could 'exit' their existing timeshare membership was to purchase Fractional Club membership, which isn't true; second, it guaranteed that Mr and Mrs K would 'exit' the Fractional Club membership after a finite period, but this isn't true as a purchaser must first be found.
- Specific terms were unfair by reference to the Unfair Terms in Consumer Contracts Regulations 1999, which rendered the relationship unfair.
- The commission arrangements between Shawbrook and the Supplier made the relationship unfair.

Shawbrook dealt with the Letter of Claim as a complaint and issued its final response letter on 16 November 2017. It rejected the complaint on every ground.

PR1 then referred the complaint to our service.

One of our investigators rejected the complaint on its merits.

PR1 asked that an ombudsman make a final decision, and it provided a 36-page submission 'to assist a number of purchasers' of Fractional Club membership.

In February 2023, Mr and Mrs K changed their professional representative to 'PR2'.

In August 2023, PR2 made some further submissions. Specifically, it said Mr and Mrs K were told the Fractional Club membership would be a 'good investment', and that at the end of the term, they would 'get their money back with a profit'. PR2 specifically referred to *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd* [2023] EWHC 1069 (Admin) ('*Shawbrook v Financial Ombudsman Service*'), which confirmed that a creditor-debtor relationship could be unfair under section 140A of the CCA if the timeshare membership was sold as an investment. And it said the contract should be void for illegality.

In November 2023, PR2 made some further submissions. Specifically, it:

- reiterated its earlier claim that the membership was sold as an investment;
- alleged that there was limited availability, when Mr and Mrs K were told there would be 'no problem in booking the dates he [sic] wanted';
- alleged that Mr and Mrs K were told that the annual maintenance fees would only increase in line with inflation, when they've in fact increased significantly; and,
- asked that Shawbrook disclose any commission payments.

Another investigator reconsidered the complaint and upheld it.

Shawbrook asked that an ombudsman make a final decision.

I issued a provisional decision on 14 January 2026, which explained why I didn't intend to uphold this complaint. It included the following provisional findings:

I'm not currently minded to uphold this complaint.

Before I explain why, I want to make it clear that my role as an ombudsman isn't to address every single point that's been made to date – it's to decide what's fair and reasonable in the circumstances of this complaint. So if I haven't commented on, or referred to, something that either party has said, it doesn't mean I haven't considered it.

Section 75

Section 75 of the CCA protects consumers who buy goods and services on credit. It says, if certain conditions are met, that the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier.

In the Letter of Claim, PR1 says the Supplier misrepresented the Fractional Club membership in two ways: it told Mr and Mrs K that Fractional Club membership was the only way of releasing themselves from their existing membership when that wasn't true; and, it told them the membership had a guaranteed end date when that wasn't true.

However, neither PR1 nor PR2 has provided any evidence to support either allegation. For example, they haven't provided any first-hand testimony from Mr or Mrs K. Essentially, they're bare allegations. And I'm mindful that PR1's Letter of Claim for Mr and Mrs K is almost identical to the letter of claim it submitted for lots of other consumers. As there isn't any evidence on file to support the suggestion that Fractional Club membership was misrepresented in the way alleged, I don't think it was.

Similarly, PR2 hasn't provided any evidence to support its submissions that Mr and Mrs K were told that there would be 'no problem in booking the dates he [sic] wanted', and that annual maintenance fees would only increase in line with inflation. What's more, PR2 only made these allegations in November 2023 – more than six years after the original claim, which made no mention of any problems with availability. And PR1's Letter of Claim said the

terms governing maintenance fees weren't explained 'fully or at all'. Now, PR2 says the Supplier explicitly assured Mr and Mrs K that the fees would only increase in line with inflation. In the circumstances, I've simply seen insufficient evidence to safely conclude that there were problems with availability, and they were such that there was an actionable misrepresentation or a breach of contract by the Supplier, or that the Supplier misrepresented the terms governing maintenance fees.

Based on what I've seen so far, I'm not persuaded that there was a misrepresentation or a breach of contract by the Supplier for which Shawbrook is legally answerable. It follows that I don't think it was unfair for Shawbrook to decline the claim under section 75.

Section 140A

Section 140A says a court may make an order if it thinks the relationship between a creditor and a debtor is unfair to the debtor. It's deliberately framed in wide terms, and a finding of unfairness can flow from something done on the creditor's behalf in connection with a 'related agreement'. Here, the purchase agreement is a 'related agreement'. And, by virtue of section 56 of the CCA, Shawbrook is legally answerable for the Supplier's actions.

Having considered the entirety of the relationship, I don't think it was unfair for the purposes of section 140A. In reaching this conclusion, I've considered:

- (1) The standard of the Supplier's commercial conduct, which includes its sales and marketing practices at the time of sale, and any relevant training material.
- (2) The information provided by the Supplier at the time of sale, including the contracts and any disclaimers made by the Supplier.
- (3) The commission arrangements between Shawbrook and the Supplier at the time of sale and the disclosure of those arrangements.
- (4) All the evidence provided by both parties on what was supposedly said and/or done at the time of sale.
- (5) The inherent probabilities of what's likely to have happened given the circumstances of the sale.

The Supplier's sales and marketing practices at the time of sale

There are several reasons why PR1 and PR2 say Mr and Mrs K's creditor-debtor relationship with Shawbrook was unfair to them.

PR1 says that the right affordability checks weren't carried out. But even if I were to find that Shawbrook failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs K was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with Shawbrook was unfair to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for them.

PR1 also says the Supplier applied 'undue' pressure on Mr and Mrs K – but it doesn't say how. I appreciate that Mr and Mrs K may have felt weary after a sales process that went on for a long time. But, as I've explained above, neither PR1 nor PR2 has provided any direct, first-hand testimony from Mr or Mrs K. PR1 doesn't say what was supposedly said and/or done by the Supplier during the sales presentation that made Mr and Mrs K feel as if they had no choice but to purchase Fractional Club membership when they didn't want to. They were also given a 14-day cooling off period and they haven't provided a credible explanation for why they didn't cancel their membership. In the circumstances, I've seen insufficient evidence to conclude that Mr and Mrs K made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by

pressure from the Supplier.

Overall, therefore, I don't think that Mr and Mrs K's credit relationship with Shawbrook was rendered unfair to them under Section 140A for any of the reasons above. However, PR2 says the Fractional Club membership was sold and/or marketed as an investment in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'), and that this renders the relationship unfair under section 140A.

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

I'm satisfied that the Fractional Club membership meets the definition of a 'timeshare contract' and is a 'regulated contract' for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations says a supplier must not market or sell a proposed timeshare contract as an investment.

The term 'investment' isn't defined in the Timeshare Regulations. But I'll adopt the same definition that was used in R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd [2023] EWHC 1069 (Admin) ('Shawbrook v Financial Ombudsman Service'), which says it's a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

The Fractional Club membership clearly included an investment component in that Mr and Mrs K's share of the proceeds of the deferred sale offered the prospect of a financial return – whether or not, like all investments, that return was more, less or the same as the sum invested. But it's important to note that the fact that the Fractional Club membership included an investment component did not, in itself, transgress the prohibition in Regulation 14(3). Regulation 14(3) prohibits the marketing or selling of a timeshare contract as an investment. It doesn't prohibit the existence of an investment component in a timeshare contract or the marketing and/or selling of such a contract per se. In other words, the Timeshare Regulations didn't ban products like the Fractional Club – they simply regulated how they were marketed and sold.

To conclude, therefore, that the Fractional Club membership was marketed or sold to Mr and Mrs K as an investment in breach of Regulation 14(3), I must 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 the Fractional Club membership was marketed and/or sold by the Supplier as an investment in breach of Regulation 14(3).

On the one hand, it's clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective members, such as Mr and Mrs K, the financial value of their share in the net sales proceeds of the Allocated Property, along with the investment considerations, like the associated risk and reward.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's also possible that Fractional Club membership was marketed and sold to Mr and Mrs K as an investment in breach of Regulation 14(3).

However, whether there was a breach of the relevant prohibition by the Supplier is not

ultimately determinative of the outcome for this complaint for reasons I'll explain, so it's not necessary for me to make a formal finding on this particular issue.

Would the credit relationships between Shawbrook and Mr and Mrs K have been rendered unfair to them had there been a breach of Regulation 14(3) of the Timeshare Regulations?

As I think it's possible the Supplier breached Regulation 14(3) at the time of each sale, I now need to decide what impact it might have had on the fairness of the relationship between Mr and Mrs K and Shawbrook. I say this because in *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61 ('Plevin'), the Supreme Court said:

'Section 140A [...] does not impose any obligation and is not concerned with the question whether the creditor or anyone else is in breach of a duty. It is concerned with the question whether the creditor's relationship with the debtor was unfair.'

What this means is that a breach of Regulation 14(3) doesn't automatically mean the credit relationship is unfair 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. For me to conclude that a breach of Regulation 14(3) led to an unfair relationship, I need to see sufficient evidence to conclude, on the balance of probabilities, that the prospect of a financial gain was an important and motivating factor for Mr and Mrs K when they decided to purchase the membership.

As I've explained above, neither PR1 nor PR2 has provided any direct, first-hand testimony from Mr or Mrs K.

In fact, PR1 doesn't say anything in its Letter of Claim about the Supplier marketing or selling the Fractional Club membership as an investment, despite making several other detailed allegations, and I would have expected it to specifically mention this if it was important to Mr and Mrs K or caused them to buy the membership.

PR2's late submissions in August 2023 are identical to the submissions they've made in other cases, so when it says, for example, 'Our Client [sic] was told that Fractional Ownership would be a 'good investment'...', I've taken that to be a submission rather than evidence from Mr and Mrs K.

In November 2023, PR2 provided further submissions, which included:

'Our Client [sic] was sold this Timeshare package as an investment, being told that he could sell this package at a future date for a very healthy profit. This statement above all else was one of the key motivators for investing in [Fractional Club membership].'

It goes on to say that '...his [sic] main focus was investment rather than holiday destinations...'

But even if I accept that these submissions are a summary of Mr and Mrs K's recent recollections, it's not direct testimony from the consumers, in full and in their own words. What's more, it's clear it was prepared after the court had handed down its judgment in *Shawbrook v Financial Ombudsman Service* and more than ten years after the events complained about and more than six years after the Letter of Claim. Experience tells me that the more time that passes between the event complained about and the consumers sharing their recollections, the greater the risk that the consumers' recollections will be vague and inaccurate and potentially influenced by discussions with others and even the complaint process itself. Indeed, as there's no evidence on file to corroborate the summary of Mr and

Mrs K's recent recollections, I think there's a real risk that their recollections were influenced by PR2's submissions and/or the judgment in Shawbrook v Financial Ombudsman Service. This means that I can't give them the weight necessary to conclude that the credit relationship in question was unfair because of a breach of Regulation 14(3).

The information provided by the Supplier at the time of sale

PR1 also said that there are some unfair contract terms in the purchase agreement. However, it hasn't provided any evidence that those terms were operated unfairly against Mr and Mrs K in practice, nor that such terms led them to behave in a way that was to their detriment. I'm therefore not persuaded that any of the terms governing the Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

PR1 and PR2 both say 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 those payments wasn't disclosed.

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 held 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 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.*

I think the Supreme Court's judgment in Hopcraft, Johnson and Wrench sets out principles which apply to credit brokers other than car dealer-credit brokers. So when considering

concerns of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under Rule 3.6.4 of the FCA's DISP rules.

But I don't think Hopcraft, Johnson and Wrench assists Mr and Mrs K 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 the Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr and Mrs K, 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 K 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 don't 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. So it isn't necessary for me to make a formal finding on this because, even if Shawbrook and the Supplier failed to follow the relevant regulatory guidance at the time of sale, it's for the reasons set out below that I don't currently think any such failure is itself a reason to conclude that the credit relationship in question is unfair to Mr and Mrs K.

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 K entered into wasn't high. The payment was not more than 10% of the amount borrowed and even less than that as a proportion of the charge for credit. So had they known 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 the time. After all, Mr and Mrs K wanted the 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 Mr and Mrs K would still have taken out the loan to fund their purchase 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 a timeshare. 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 express or implied – 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 K 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, I'm currently not 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 relationships unfair to Mr and Mrs K.

Section 140A conclusion

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

Commission: alternative grounds

While I've found that Mr and Mrs K'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 K'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 K (i.e., secretly). And the second relates to Shawbrook's compliance with the regulatory guidance in place at the time 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 K a fiduciary duty. So the remedies that might be available in 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 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 they would still have taken out the loan to fund their purchase had there been more adequate disclosure of the commission arrangements that applied at the time.

Overall conclusion

In conclusion, given the facts and circumstances of this complaint, I don't think Shawbrook acted unfairly when it declined Mr and Mrs K's section 75 claim. And I'm not persuaded that Shawbrook was party to a credit relationship with them under the credit agreement and related purchase agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair to direct Shawbrook to compensate Mr and Mrs K.

Shawbrook has confirmed receipt of my provisional decision and says it has nothing to add.

PR2 has me to consider a signed 'witness statement' from Mr and Mrs K, dated 27 January 2026.

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 carefully considered Mr and Mrs K's witness statement dated 27 January 2026. It would be more accurate to describe it as a submission drafted by PR2 that's been signed by Mr and Mrs K, who attest to the facts contained therein. For example, it's written in the third person (rather than the first) and it includes comments like:

'[Mr and Mrs K] are informed that the judicial review in [*Shawbrook v Financial Ombudsman Service*] clarified important aspects of the law relating to fractional

timeshare products...They rely on this clarification as further support for their position that the product they were sold was misrepresented and sold unlawfully.'

There's some additional detail, but it largely reflects the submissions provided by PR2 in November 2023, which I considered before I made my provisional decision. In my provisional decision, I explained that even if I were to accept that those submissions were a summary of Mr and Mrs K's recent recollections, it's not direct testimony from Mr and Mrs K, in full and in their own words. It's worth noting that the signed witness statement PR2 has provided isn't either.

I also explained in my provisional decision that I thought there was a real risk that Mr and Mrs K's recollections had been influenced by PR2's submissions and/or the judgment in *Shawbrook v Financial Ombudsman Service*, and I explained that I was therefore unable to give those recollections the weight necessary to conclude that the credit relationship in question was unfair under section 140A. That Mr and Mrs K have now essentially signed a version of those submissions doesn't change that. I think the risk remains the same.

I therefore remain of the opinion that it was fair for Shawbrook to decline Mr and Mrs K's section 75 claim. And I'm not persuaded that Shawbrook was party to credit relationship with them under the credit agreement and related purchase agreement that was unfair to them for the purposes of section 140A of the CCA. And having taking everything into account, I see no other reason why it would be fair to direct Shawbrook to compensate Mr and Mrs K.

My final decision

For the reasons given, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 5 March 2026.

Christopher Reeves
Ombudsman