DRN-6130094

The complaint

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

What happened

The product at the centre of this complaint is Mr and Mrs C's membership of a timeshare that I'll call the 'Fractional Club'. They purchased this from a timeshare provider (the 'Supplier') on the dates below:

- 1,200 fractional points on 24 February 2014 for £15,848 (the 'First Purchase Agreement')
- 1,420 fractional points on 15 October 2014 for £8,096 – having traded in the membership bought under the First Purchase Agreement (the 'Second Purchase Agreement')

(which, when appropriate, I'll simply refer to as the 'Purchase Agreements')

As this complaint concerns both purchases, 24 February 2014 (the 'First Time of Sale') and 15 October 2014 (the 'Second Time of Sale') are the 'Times of Sale' for the purposes of my decision.

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

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

- £15,848 on 24 February 2014 (the 'First Credit Agreement')
- £8,096 on 15 October 2014 (the 'Second Credit Agreement')

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

Mr and Mrs C – using a professional representative (the 'PR') – wrote to the Lender on 18 October 2021 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr and Mrs C's concerns as a Section 75 claim and issued its response on 1 November 2021, explaining why it was not prepared to accept this.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by

one of our Investigators who, having considered the information on file, rejected the complaint on its merits.

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

I considered the matter and issued a provisional decision (the 'PD') dated 27 January 2026. In that decision, I said:

> "I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I do not currently think this complaint should be upheld.
>
> However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.
>
> **Section 75 of the CCA: the Supplier's misrepresentations at the Times of Sale**
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> This part of Mr and Mrs C's complaint was made for several reasons, which included that the Supplier misrepresented Fractional Club membership at the Times of Sale as it told them they had purchased investments which would considerably increase in value and that they would have access to the Allocated Properties at any time.
>
> Generally, creditors can reasonably reject Section 75 claims that they are first made aware of after the claim has become time barred under the Limitation Act (the 'LA'), as it wouldn't be fair to expect them to look into such claims so long after the liability arose, and after a limitation defence would have been available in court. Therefore, it's relevant to consider whether Mr and Mrs C's Section 75 claims were time barred under the LA before they put them to the Lender.
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> A claim under Section 75 is a "like claim" against the creditor. It in effect mirrors the claim a consumer could make against the Supplier.
>
> A claim for misrepresentation against the Supplier would typically be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued (see Section 2 of the LA).
>
> However, a claim under Section 75, like the ones in question here, is also "an action to recover any sum by virtue of any enactment" under Section 9 of the LA. The limitation period under that provision is also six years from the date on which the cause of action accrued.
>
> The dates on which the causes of action accrued were the Times of Sale. That's when Mr and Mrs C entered into the purchases of their timeshares based on the alleged misrepresentations of the Supplier – which they say they relied on. Further, as the loans from the Lender were used to help finance the purchases, it was when they entered into the Credit Agreements that they suffered losses.
>
> Mr and Mrs C first notified the Lender of their Section 75 claims on 18 October 2021. Given more than six years had passed between the Times of Sale and when they first put their claims to the Lender, in my view it was neither unfair nor unreasonable

that the Lender rejected their concerns about the Supplier's alleged misrepresentations.

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

I've already explained why I don't think the Lender acted unfairly or unreasonably when it rejected Mr and Mrs C's Section 75 claims in respect of the Supplier's alleged misrepresentations at the Times of Sale. But there are other aspects of the sales processes that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

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

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Times of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Times of Sale, including the contractual documentation and disclaimers made by the Supplier;
3. Evidence provided by both parties on what was likely to have been said and/or done at the Times of Sale;
4. The inherent probabilities of the sales given their circumstances; and, when relevant
5. Any existing unfairness from a related credit agreement.

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

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

Mr and Mrs C's complaint about the Lender being party to unfair credit relationships was made for several reasons.

The PR says, for instance, that the right checks weren't carried out before the Lender lent to Mr and Mrs C. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs C was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationships with the Lender were unfair to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for them.

Connected to this is the suggestion by the PR that the Credit Agreements were arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreements. However, it looks to me like Mr and Mrs C knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Fractional Club membership. And as none of the lending looks like it was unaffordable for them, even if the one or more of the Credit Agreements were

arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mr and Mrs C experiencing a financial loss – such that I can say that the credit relationships in question were unfair on them as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate them, even if the loans weren't arranged properly.

The PR also says that there were one or more unfair contract terms in the Purchase Agreements. But as I can't see that any such terms were operated unfairly against Mr and Mrs C in practice, nor that any such terms led them to behave in a certain way to their detriment, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

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

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

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

Shares in the Allocated Properties clearly constituted investments as they offered Mr and Mrs C the prospect of a financial return – whether or not, like all investments, that was more than what they first put into them. But it's important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

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

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs C as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e. a profit) given the facts and circumstances of *this* complaint.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Times of Sale as an investment in breach of Regulation 14(3) of the Timeshare Regulations.

On the one hand, it's clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an "investment" or quantifying to prospective purchasers, such as Mr and Mrs C, the financial value of their share in the net sales proceeds of their allocated property along with the investment considerations, risks and rewards attached to it.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative(s) 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 C 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.

Would the credit relationships between the Lender and Mr and Mrs C have been rendered unfair to them had there been breaches of Regulation 14(3) of the Timeshare Regulations?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Times of Sale, I now need to consider what impact such breaches had on the fairness of the credit relationships between Mr and Mrs C and the Lender under the Credit Agreements and related Purchase Agreements as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that, if I am to conclude that breaches of Regulation 14(3) led to credit relationships between Mr and Mrs C and the Lender that were unfair to them and warranted relief as a result, whether the Supplier's breaches of Regulation 14(3) led them to enter into the Purchase Agreements and the Credit Agreements is an important consideration.

Following the Investigator's view that Mr and Mrs C's complaint should not be upheld, the PR provided a statement from them dated 1 September 2025 containing their recollections of the Times of Sale. In their statement, Mr and Mrs C say that at the First Time of Sale, the sales representative(s) said the First Allocated Property would "go up in value" and while they had doubts, they felt "there was nothing to lose" as they "would receive a return when the contract finished." And that at the Second Time of Sale, they were assured that upgrading their membership would result in a "higher amount". So, they thought it would be best to "upgrade" their "investment", given they "had already invested".

But it was only after the Investigator issued their view, and after the judgment in *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*') was handed down, that Mr and Mrs C recalled that the Supplier led

them to believe that Fractional Club membership offered them the prospect of a financial gain. And as experience tells me that, the more time that passes between a complaint and the event complained about, the more risk there is of recollections being vague, inaccurate and/or influenced by discussion with others, I find it difficult to understand why the Financial Ombudsman Service was only given such evidence when it was.

The Letter of Complaint, which was sent prior to the Investigator's view and the judgment in *Shawbrook & BPF v FOS*, does say that Fractional Club membership was sold to Mr and Mrs C as an investment. But as the PR has made the same allegations in the same way on a significant number of complaints, I am not persuaded these were tailored based on individual comments Mr and Mrs C made around the time the Letter of Complaint was sent.

Indeed, as there isn't any other evidence on file to corroborate Mr and Mrs C's very recent evidence about their motivations at the Times of Sale, there seems to me to be a very real risk that their recollections were coloured by the judgment in *Shawbrook & BPF v FOS*. And with that being the case, I'm not persuaded that I can give their written recollections the weight necessary to find that the credit relationships in question were unfair for reasons relating to breaches of the relevant prohibition.

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

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

The PR says that payments of commission from the Lender to the Supplier at the Times of Sale should lead me to uphold this complaint because, simply put, information in relation to those payments went undisclosed at the Times of Sale.

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

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

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

1. The size of the commission (as a percentage of the total charge for credit).

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

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

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

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

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

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr and Mrs C, nor have I seen anything that persuades me that the commission arrangements between them gave the Supplier a choice over the interest rate that led Mr and Mrs C into credit agreements that cost disproportionately more than they otherwise could have.

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

But as I've said before, the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Times of Sale, it's for the reasons set out below that I don't think any such failure is itself a reason to find the credit relationships in question unfair to Mr and Mrs C.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the First Credit Agreement wasn't high. At £1584.80, it was only 10% of the amount borrowed and even less than that (5.5%) as a proportion of the charge for credit. So, had Mr and Mrs C known at the First Time of

Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr and Mrs C 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 First Time of Sale had the amount of commission been disclosed.

And also contrary to the facts of Mr Johnson's case, as I understand it, the Lender didn't pay the Supplier any commission at the Second Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not currently persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship arising from the Second Credit Agreement unfair to Mr and Mrs C.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreements. And as it wasn't acting as an agent of Mr and Mrs C but as the supplier of contractual rights they obtained under the Purchase Agreements, the transactions don't strike me as ones with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreements and thus a fiduciary duty.

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

S140A conclusion

Given all the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationships between Mr and Mrs C and the Lender under the Credit Agreements and related Purchase Agreements were unfair to them. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

Commission: the alternative grounds of complaint

While I've found that the credit relationship arising from the First Credit Agreement wasn't unfair to Mr and Mrs C for reasons relating to the commission arrangements between the Lender and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to their complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr and Mrs C (i.e. secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the First 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 C a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to them. And while it's possible that the Lender failed to follow the regulatory guidance in place at the First 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 the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think they would still have taken out the loan to fund their purchase at the First 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 the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs C's Section 75 claims, and I was not persuaded that the Lender was party to credit relationships with them under the Credit Agreements that were unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

The PR responded that it did not accept the PD and provided some further comments to be considered. The Lender had no further comments.

I am now in a position to finalise my decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've considered the case afresh following the responses from the parties. Having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the PD only relate to the issue of whether the credit relationships between Mr and Mrs C and the Lender were unfair. In particular, the PR has provided further comments in relation to whether Fractional Club membership was sold to them as an investment at the Times of Sale. It's also provided further comments to support its argument that the payment of commission by the Lender to the Supplier at the First Time of Sale led to an unfair credit relationship.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But it didn't make any further comments in relation to those in its response to my PD. Indeed, it hasn't said it disagrees with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in respect of those other points by either party, I see no reason to change my conclusions

about them as set out in my PD. So, I'll focus here on the PR's points raised in response.

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

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

The PR explained in its response to my PD that it hadn't shared the Investigator's view with Mr and Mrs C "to ensure that their recollections remained entirely their own and were not influenced by external documents." It said this means their recollections haven't been influenced by either the Investigator's view or the judgment in *Shawbrook & BPF v FOS*.

Part of my assessment of the testimony was to consider *when* it was written, and whether it may have been affected by external factors such as the widespread publication of the outcome of *Shawbrook and BPF v FOS*.

I have thought about what the PR has said, but on balance, I don't find it a credible explanation of the contents of Mr and Mrs C's evidence. Here, the PR responded to the Investigator's view to say that they alleged Fractional Club membership had been sold to them as an investment at the Times of Sale and it provided evidence from them to that effect. I fail to understand how Mr and Mrs C disagreed with the view on the basis that the timeshares were sold as investments if they did not know our Investigator's conclusions. It follows, I think it more likely than not, that they did know about our Investigator's view before the evidence was provided.

I therefore maintain that there is a risk that Mr and Mrs C's testimony was coloured by the Investigator's view and/or the outcome in *Shawbrook & BPF v FOS*. And, on balance, the way in which the evidence has been provided makes me conclude that I can place little weight on it.

The PR says that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my PD, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in light of its specific circumstances.

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

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

In response to my findings on commission in my PD, the PR said that in *Hopcraft, Johnson and Wrench*, "the concern […] was not solely the quantum of the commission, but the lack of transparency and the misleading reality presented to the consumer." It argues that the partially disclosed commission prevented Mr and Mrs C from making an informed decision at the First Time of Sale and gave rise to an unfair credit relationship.

But as I've said, 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 as the amount of commission paid by the Lender to the Supplier was at such a low level, I still think Mr and Mrs C would have taken out the loan to fund their purchase at the First Time of Sale had the amount of commission been disclosed to them. So, I don't find the PR's response persuades me to depart from the conclusions I reached in my PD.

S140A conclusion

Given all the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationships between Mr and Mrs C and the Lender under the Credit Agreements and related Purchase Agreements were unfair to them. So, I don't think it's fair or reasonable that I uphold this complaint on that basis.

Overall conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs C's Section 75 claims, and I am not persuaded that the Lender was party to credit relationships with them under the Credit Agreements that were unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 17 March 2026.

Alex Salton
Ombudsman