DRN-6135918

The complaint

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

What happened

Mr M and Mrs T were trial members of a timeshare provider (the 'Supplier'). But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Signature Collection' – which they purchased on 18 March 2018 (the 'Time of Sale'). After trading in their trial membership, they paid the Supplier £10,545 for 1,070 fractional points (the 'Purchase Agreement').

Signature Collection membership was asset backed – which meant it gave Mr M and Ms T 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 the end of their membership term. However, the Signature Collection differed from other timeshares offered by the Supplier, in that members had preferential rights to stay in their allocated property, and the properties were said to be more luxurious.

Mr M and Ms T paid for their Signature Collection membership by taking finance of £13,720 from the Lender in Mr M's name (the 'Credit Agreement'). The amount borrowed exceeded the purchase price as Mr M and Ms T consolidated the finance taken to fund their trial membership into this loan.

As the finance used for the purchase at the Time of Sale was in Mr M's sole name, only he is eligible to bring this complaint. Hereafter, I shall primarily refer to Mr M.

Mr M – using a professional representative (the 'PR') – wrote to the Lender on 28 January 2022 (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 M's concerns as a Section 75 claim and issued a response explaining why it was not prepared to accept this.

Mr M's complaint was referred to the Financial Ombudsman Service on 18 August 2022. While the complaint was awaiting assessment by one of our Investigators, the Lender issued a final response letter, rejecting it on every ground.

The complaint was then assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits. The Lender disagreed with the Investigator's assessment and asked for an Ombudsman's decision.

The complaint was previously assigned to another Ombudsman who issued a provisional decision (the 'PD') dated 24 September 2025. In that decision, they said:

“I’ve considered all the available evidence and arguments to decide what’s 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

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers (“debtors”) a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants (“suppliers”) in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender doesn’t dispute that the relevant conditions are met. But for reasons I’ll come on to below, it isn’t necessary to make any formal findings on them here.

It was said in the Letter of Complaint that Signature Collection membership had been misrepresented by the Supplier at the Time of Sale because Mr M was:

1. told he had purchased an investment that would “considerably appreciate in value”.
2. promised a considerable return on his investment because he was told that he would own a share in a property that would considerably increase in value.
3. told that he could sell the Signature Collection membership to the Supplier or easily to third parties at a profit.
4. made to believe that he would have access to “the holiday apartment” at any time all year round.

However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier’s properties was not untrue. 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, whilst an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

As for points 3 and 4, while it’s *possible* that Signature Collection membership was misrepresented at the Time of Sale for one or both of those reasons, I don’t think it’s *probable*. They’re given little to none of the colour or context necessary to demonstrate that the Supplier made false statements of existing fact and/or opinion. And as there isn’t any other evidence on file to support the suggestion that Signature Collection membership was misrepresented for these reasons, I don’t think it was.

So, while I recognise that Mr M – and the PR – have concerns about the way in which Signature Collection membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

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

I've already explained why I'm not persuaded that Signature Collection membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

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

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

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

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

The PR says, for instance, that the right checks weren't carried out before the Lender lent to Mr M. 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 M was actually unaffordable before also concluding that he lost out as a result – and then consider whether the credit relationship with the Lender was unfair to him for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr M.

Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr M knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for

the Signature Collection membership. And as the lending doesn't look like it was unaffordable for him, even if the Credit Agreement was 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 would lead to Mr M's alleged financial loss – such that I can say that the credit relationship in question was unfair to him 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 him, even if the loan wasn't arranged properly.

The PR also says that there were one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Mr M in practice, nor that any such terms led him to behave in a certain way to his detriment, I'm not persuaded that any of the terms governing Signature Collection membership are likely to have led to an unfairness that warrants a remedy.

I acknowledge that Mr M may have felt weary after a sales process that went on for a long time. He and Mrs T mention that they felt under pressure to sign up. But they say little about what was said and/or done by the Supplier during the sales presentation that made them feel as if they had no choice but to purchase Signature Collection membership when they simply did not want to. In their statement they also go on to say: *"After all of this we thought it was a fair offer and decided to sign up,* […]", which shows their evaluation of the sale and their conscious decision to go ahead, as they thought it was a good deal, rather than not having a choice under pressure.

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 M and Mrs T made the decision to purchase Signature Collection membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

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

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

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

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Signature Collection 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 – saying, in summary, that Mr M was told by the Supplier that Signature Collection membership was the type of investment that would only increase in value.

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 M the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But it is important to note at this stage that the fact that Signature Collection membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract *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 Signature Collection. They just regulated how such products were marketed and sold.

To conclude, therefore, that Signature Collection membership was marketed or sold to Mr 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 the membership to him as an investment, i.e. told him or led him to believe that Signature Collection membership offered him the prospect of a financial gain (i.e. a profit) given the facts and circumstances of *this* complaint.

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

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Signature Collection as an ‘investment’ or quantifying to prospective purchasers, such as Mr 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 Signature Collection membership as an investment. So, I accept it’s also possible that Signature Collection membership was marketed and sold to Mr 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 the Lender and Mr 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 M and the Lender under the Credit Agreement and related Purchase Agreement, as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences

(if there are any) must be considered in the round, rather than in a narrow or technical way.

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

But on my reading of the evidence before me, the prospect of a financial gain from Signature Collection membership was not an important and motivating factor when he decided to go ahead with the purchase. In their testimony Mr M and Mrs T say:

> *"We chose to take Week 16 (Mid), they told us at the end of the term of contract the property would be sold and we would get a percentage of the profit of the sale. We thought it would be nice to be an owner, it came across as through we would be a part owner and somewhat exclusive to us."* (sic)

I appreciate that there was an understanding that Mr M and Mrs T would be entitled to a part of any potential property sale profit – but I can't see anywhere in the statement that this was their motivation to purchase the membership as they don't reference this investment element or a hope for profit anywhere else in their detailed 3-page statement. Instead, they focus on the exclusivity they hoped part ownership would provide them. The investment element much more seems like a 'nice to have' factor and the motivation to enter the agreement were the holiday rights and benefits, details of which make up most of the testimony.

Mr M and Mrs T also finish their statement by saying:

> *"Having taken our week in Signature in April 2019 plus a bonus week and a points holiday, we both feel we have been misrepresented as we were led to believe* [the Supplier] *resorts were exclusive to members only but have since found out anyone can buy a holiday through 3rd parties i.e. www.booking.com at much cheaper prices. As well as this, the standards of the apartments* [the Supplier] *provide are much lower than the* [Supplier] *staff promised.*
>
> *Furthermore, the intense and lengthy manipulative selling techniques over several years & promising us 5-star exclusivity, further compound our feelings of being misled."*

Whilst this quite clearly shows their dissatisfaction about the lack of exclusivity of the resorts, the standards of the accommodation, as well as pressure sales techniques, they don't mention the investment or how they were looking to gain a profit from the purchase. So, as mentioned above, this further underlines the impression that it was the holiday benefits that led Mr M into entering the Purchase and Credit Agreement.

That doesn't mean he wasn't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr M doesn't persuade me that the purchase was motivated by his 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 Mr M ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Signature Collection membership as an investment in breach of Regulation 14(3) of the

> Timeshare Regulations, I am not persuaded that Mr M's decision to purchase Signature Collection 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 he would have gone ahead with the 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 M and the Lender was unfair to him, even if the Supplier had breached Regulation 14(3)."

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

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

The previous Ombudsman has since left the Financial Ombudsman Service. So, the complaint has been reallocated to me for a final decision. I reviewed the complaint afresh and informed the parties that I agreed with the outcome the previous Ombudsman reached in their PD, for broadly the same reasons. I asked the parties to provide any further comments or evidence they wanted me to consider by 4 February 2026, after which I would make my final decision.

The PR did not respond, and the Lender confirmed it had nothing further to add. I am now in a position to finalise my decision.

The legal and regulatory context

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

In their PD, the previous Ombudsman explained that the legal and regulatory context that they thought was 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 was not necessary to set out that context in detail. But following the PD, I would add that the following regulatory rules/guidance are also relevant:

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

Below are the most relevant provisions and/or guidance as they were at the relevant time:

- CONC 3.7.3 R
- CONC 4.5.3 R
- CONC 4.5.2 G

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

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

What I've decided – and why

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

I have reviewed the PR's response to the previous Ombudsman's PD. Having done so, I have not been persuaded to change the outcome they reached.

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 relationship between Mr M and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to him as an investment at the Time of Sale. It's now also argued for the first time that a contradiction in the purchasing documentation and the payment of commission by the Lender to the Supplier led to an unfair credit relationship.

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

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

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

In their statement, Mr M and Ms T do not explain why, or indeed if, the investment element of Signature Collection membership was the motivation for the purchase at the Time of Sale. They simply recount what the relevant sales representative(s) told them about this. In fact, as the previous Ombudsman explained, much of Mr M and Ms T's dissatisfaction with the product appears to stem from the holiday element of membership. And in the absence of compelling testimony that the investment element of Signature Collection membership was the motivation for Mr M's purchase, I'm not persuaded it was.

I agree with the PR that just because a purchaser was interested in taking holidays with the Supplier, that does not necessarily mean they weren't motivated to take out Signature Collection membership because of its inherent investment element. Indeed, I would find it

surprising if any members were not interested in taking holidays, given the nature of the product. But I do not find such investment motivation in this case.

So, ultimately, for the above reasons, along with those explained by the previous Ombudsman in their PD, I am unpersuaded that any breach of Regulation 14(3) was material to Mr M's purchasing decision.

The PR says that as the Supplier's pricing sheet refers to the "Unit Share %" provided under Mr M's Signature Collection membership, this shows the investment element was an "important part" of the sales process and "played quite an important role" in his purchasing decision. But I don't agree. As the previous Ombudsman explained in their PD, it's not in dispute that Signature Collection membership contained an investment element and it's possible that it was marketed or sold to Mr M as an investment (although no finding has been made on this). However, the simple fact that his share in the Allocated Property was recorded on the pricing sheet does not offer an insight into his motivation for his purchase.

The PR also 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 Signature Collection. 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 the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr M's decision to make the purchase was motivated by the prospect of a financial gain. And for that reason, I still don't think the credit relationship between Mr M and the Lender was unfair to him.

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

The PR says that a payment of commission from the Lender 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 FCA's Dispute Resolution rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mr M in arguing that his credit relationship with the Lender was unfair to him 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 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 him into a credit agreement that cost disproportionately more than it 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 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 the Lender 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 think any such failure is itself a reason to find the credit relationship in question unfair to Mr M.

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 Credit Agreement that Mr M entered into wasn't high. At £686, it was only 5% of the amount borrowed and only 7.4% as a proportion of the charge for credit. So, had Mr M 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 persuaded that he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr M wanted Signature Collection membership and had no obvious means of his own to pay for it. And at such a low level, the impact of commission on the cost of the credit

he needed for a timeshare he wanted doesn't strike me as disproportionate. So, I think he would still have taken out the loan to fund his 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 M but as the supplier of contractual rights he 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 him when arranging the Credit Agreement 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 relationship unfair to Mr M.

I will also address the PR's point regarding the apparent ambiguity in the proposed sale date of the Allocated Property. The PR suggests that a delayed sale date could lead to an unfairness to Mr M in the future, as any delay could mean a delay in the realisation of his share in the Allocated Property.

It does appear that the proposed date for the commencement of the sales process, as set out on the owners' certificate, is 31 December 2035. The same date is set out under point 1 of the Member's Declaration, which has been initialled and signed as being read by Mr M. This date indicates that the membership has a term of 17 years from the first year of occupancy. The ambiguity identified by the PR is that in the Information Statement provided as part of the purchase documentation it will have said the following:

> "The Owning Company will retain such Suite until the automatic sale date in **19 years time** or such later date as is specified in the Rules or the Fractional Rights Certificate."
>
> [my emphasis]

It seems clear to me that the commencement date for the start of the sales process is 31 December 2035. This actual date is repeated in the sales documentation as I've set out above. So, I can't see that this is a reason to find the credit relationship unfair and uphold this complaint.

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 relationship between Mr M and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. 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 Mr M's credit relationship with the Lender wasn't unfair to him 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 his 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 M (i.e. secretly). And the second relates to the Lender'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 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 him. And while it's possible that the Lender 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 the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think Mr M would still have taken out the loan to fund his purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

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 M's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 March 2026.

Alex Salton
Ombudsman