DRN-6139244

The complaint

Mr H and Mrs H'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 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.

Background to the complaint

Mr H and Mrs H were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Signature Collection' – points in which Mr H and Mrs H purchased on the dates below:

- 1070 fractional points on 2 April 2015 for £12,442 ('Purchase Agreement 1')
- 1280 fractional points on 25 April 2016 for £9,757- having traded in the first lot of 1070 fractional points. ('Purchase Agreement 2')

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

As this complaint is concerned with the purchases on 2 April 2015 and 25 April 2016, these are the 'Times of Sale' for the purposes of my decision.

Signature Collection membership was asset backed – which meant it gave Mr H and Mrs H 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 'Allocated Property 1 and 2' or, when appropriate, the 'Allocated Properties') after their membership term ends.

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

- £12,442 on 20 April 2015 ('Credit Agreement 1')
- £20,151 on 12 May 2016 ('Credit Agreement 2') – this included the sum of £10,394 that was used to clear Credit Agreement 1.

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

Mr H and Mrs H – using a professional representative (the 'PR') – wrote to the Lender on 2 February 2022 about Purchase 1, and 3 February 2020 about Purchase 2 (the 'Letters 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.

As the Lender and Mr H and Mrs H were unable to reach an agreement, a complaint about both Credit Agreements was referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on

its merits.

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

I issued a provisional decision dated 12 November 2025.

The Lender accepted my provisional decision without further comment. But, for the first time the PR raised concerns about any undisclosed commission the Lender may have paid the Supplier. So, I decided to issue a second provisional decision, dated 14 January 2026, to address the matter of any undisclosed commission, and asked for further comments in this regard by 4 February 2026. In this provisional decision I said:

*"**The legal and regulatory context***

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

The legal and regulatory context that I think is relevant to this complaint is, in many ways. no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance

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

- *CONC 3.7.3 [R]*
- *CONC 4.5.3 [R]*
- *CONC 4.5.2 [G]*

The FCA's Principles

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

- *Principle 6*
- *Principle 7*
- *Principle 8*

What I've provisionally 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. 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

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 Fractional Club membership had been misrepresented by the Supplier at the Times of Sale because Mr H and Mrs H were:

1. *Told that they had purchased an investment that would "considerably appreciate in value".*
2. *Promised a considerable return on their investment because they were told that they would own a share in a property that would considerably increase in value.*
3. *Told that they could sell their Signature Collection membership to the Supplier or easily to third parties at a profit.*
4. *Made to believe that they 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 a honestly held opinion as there isn't any accompanying evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

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 demonstrating 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 H and Mrs H 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 one or more unfair credit relationships?

I've already explained why I'm not persuaded that Signature Collection membership was actionably misrepresented by the Supplier 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 H and Mrs H and the Lender along with all of 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 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 relevant credit relationships between Mr H and Mrs H and the Lender.

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

Mr H and Mrs H'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 H and Mrs H. 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 H and Mrs H was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationships with the Lender was unfair to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for the Mr H and Mrs H.

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 H and Mrs H 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 Signature Collection membership. And as none of the lending looks like it was unaffordable for them, even if 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 H and Mrs H 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 was 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 H and Mrs H 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 Signature Collection membership are likely to have led to an unfairness that warrants a remedy.

I acknowledge that Mr H and Mrs H say the sales processes for Purchase 1 and Purchase

2 were lengthy. 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 and Signature Collection memberships when they simply did not want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr H and Mrs H made the decisions to purchase their membership, and to upgrade it later in 2016, because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

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

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

Shares in the Allocated Properties clearly constituted investments as they offered Mr H and Mrs H the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that 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 and Fractional Club memberships were marketed or sold to Mr H and Mrs H 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 Signature Collection 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 Signature Collection 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 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 H and Mrs H, the financial value of their share in the net sales proceeds of the Allocated Properties 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 that it's equally possible that Signature Collection membership was marketed and sold to Mr H and Mrs H 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 H and Mrs H have been rendered unfair to them had there been a breach 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 H and Mrs H 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 a breach of Regulation 14(3) led to credit relationships between Mr H and Mrs H and the Lender that were unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreements and the Credit Agreements is an important consideration.

In their witness statement Mr H and Mrs H say that the Signature Collection was presented as a valuable investment asset and provided future holidays each year. They say they were told that their initial investment and any increase in their share of the Allocated Property would be returned at the end of the term. Mr H and Mrs H say they upgraded their membership because they were told their initial investment would increase year-on-year.

I acknowledge, that in their witness statement, Mr H and Mrs H refer to their memberships as an 'investment', but there is nothing in what they say which makes me think the Supplier told them or led them to believe that purchasing the Fractional Club and Signature Collection memberships offered them the prospect of a financial gain or profit. Instead, It seems to me that Mr H and Mrs H have simply provided a description of what they were told by the relevant sales representative(s), rather than explaining why, or indeed if, the investment element of Signature Collection membership was the motivation behind the purchase.

Regardless of this, even if I take Mr H and Mrs H's description of the sale process that is at the crux of this part of the complaint, it's not clear enough to me from what they say that they relied on any statement made by the Supplier which promoted their memberships investments that would bring a financial gain or profit when making their decision to purchase them.

In the absence of compelling testimony from Mr H and Mrs H that the investment element of their memberships was the motivation for their purchase, and in my reading of the evidence provided, I'm not persuaded the prospect of a financial gain from the Fractional Club and Signature Collection memberships was an important and motivating factor when they decided to go ahead with their purchases. That doesn't mean they weren't interested in a share in the Allocated Properties. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr H and Mrs H themselves don't persuade me that their purchases were motivated by their shares in the Allocated Properties and the possibility of a profit, I don't think breaches of Regulation 14(3) by the Supplier were likely to have been material to the decisions they ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club and Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr H and Mrs H's decision to purchase

Signature Collection and Fractional Club memberships at the Times of Sale were motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchases whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationships between Mr H and Mrs H 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 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 Cort held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

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

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

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

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

But I don't think Hopcraft, Johnson and Wrench assists Mr H and Mrs H in arguing that their credit relationship with the Lender 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 the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr H and Mrs H, 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 H and Mrs H 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 Sales 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 is for the reasons set out below that I don't currently think any such failure is itself a reason to find the credit relationship in question unfair to Mr H and Mrs H.

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 H and Mrs H 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.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, the Lender didn't pay the Supplier any commission at the 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 unfair to Mr H and Mrs H.

Section 140A: Conclusion

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

In respect of my provisional decision dated 14 January 2026, neither the PR nor Mr H and Mrs H have provided any further comments or evidence for me to consider.

The Lender said it has no other comments for me to consider.

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 dealt with the comments and evidence provided by the PR in my provisional decision dated 14 January 2026. As I've received no further comments or evidence to consider, I've decided to adopt my provisional decision of 14 January 2026 as my final decision.

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 H and Mrs H's Section 75 claims. I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreements and related Purchase Agreements 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 or reasonable to direct the Lender to compensate them.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 9 March 2026.

Paul Lawton
Ombudsman