

## The complaint

Mr O'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 and Mrs O were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 19 December 2016 (the 'Time of Sale'). After trading in part of their existing timeshare membership, they paid £6,886 for 540 fractional points (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs O 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.

Mr and Mrs O paid for their Fractional Club membership by taking finance of £14,967 from the Lender in Mr O's name (the 'Credit Agreement'). The amount borrowed exceeded the purchase price as they consolidated previous finance from the Lender into this loan.

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

Mr O – using a professional representative (the 'PR') – wrote to the Lender on 27 January 2023 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

As the Lender did not respond to the complaint, the PR referred it to the Financial Ombudsman Service on 13 September 2024. While the complaint was awaiting allocation to 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, rejected it on its merits.

Mr O 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 3 February 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 Time of Sale**

This part of Mr O's complaint was made for several reasons, which included that the Supplier misrepresented the Fractional Club membership at the Time of Sale as it told him he had purchased an investment which would considerably increase in value and that he would have access to the Allocated Property at any time.

Creditors can generally 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 O's Section 75 claim was time barred under the LA before he put it to the Lender.

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 one 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 date on which the cause of action accrued was the Time of Sale. That's when Mr O entered into the purchase of his timeshare based on the alleged misrepresentations of the Supplier – which he says he relied on. Further, as the loan from the Lender was used to help finance the purchase, it was when he entered into the Credit Agreement that he suffered a loss.

Mr O first notified the Lender of his Section 75 claim on 27 January 2023. Given more than six years had passed between the Time of Sale and when he first put his claim to the Lender, in my view it was neither unfair nor unreasonable that the Lender rejected his concerns about the Supplier's alleged misrepresentations.

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

I've already explained why I don't think the Lender acted unfairly or unreasonably when it rejected Mr O's Section 75 claim in respect of the Supplier's alleged misrepresentations 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 O and the Lender along with all 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 in relation to Fractional Club membership, 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 O and the Lender given his circumstances at the Time of Sale.

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

Mr O'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 O. 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 O 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 him.

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 O 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 Fractional Club 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 led to Mr O experiencing a financial loss – such that I can say that the credit relationship in question was unfair on 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 O 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 Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

I acknowledge that Mr O may have felt weary after a sales process that went on for a long time. But he says little about what was said and/or done by the Supplier during his sales presentation that made him feel as if he had no choice but to purchase

Fractional Club membership when he simply did not want to. He was also given a 14-day cooling off period and has not provided a credible explanation for why he did not cancel his membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr O made the decision to purchase Fractional Club membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr O'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 Fractional Club membership was marketed and sold to him as an investment in breach of a prohibition against selling timeshares in that way.

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

A share in the Allocated Property clearly constituted an investment as it offered Mr O the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. 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 O 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 him as an investment, i.e. told him or led him to believe that Fractional Club 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 Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of Regulation 14(3) of the Timeshare Regulations.

On the one hand, it'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 O, 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 O 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 relationship between the Lender and Mr O have been rendered unfair to him 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 Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr O 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 O 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.

Included in the PR's initial submissions to this service was a "Statement of Misrepresentation" dated 18 December 2021 containing Mrs O's recollections of her and her husband's various interactions with the Supplier. But this relates almost entirely to events predating the Time of Sale I'm considering in this complaint. In fact, the only parts that seem relevant to the matter I'm considering here are as follows:

"As a fractional owner we were led to believe that there would be a financial return and that the shorter term membership would result in this return, for sure, at the end of the term.

[...]

Every time we were persuaded to upgrade our membership it was explained to us that what we had did not suit our needs despite the fact that previous people had sold it to us because it suited our needs."

But this seems to be simply a description of what Mr and Mrs O were told by the relevant sales representative(s) and does not provide an insight into Mr O's motivation at the Time of Sale. It does not explain why, or indeed if, the investment element of Fractional Club membership was the motivation behind the purchase.

On another complaint, the PR provided a further statement from Mr and Mrs O dated 5 December 2023. The PR said this "relates to all timeshares they bought." The statement says:

"The fractional ownership was presented as an investment opportunity where at the end of the term we would recoup the value of our share in the property.

This was the particular selling point that made the purchase seem a good decision.

We considered this to be a valuable asset that would serve as an investment to be redeemed later in life.

The sales team had an extraordinary way of making us believe we were lucky

in our opportunity and that a good price could be achieved.”

But it was only 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 this later statement was written. 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.

I note that Mr and Mrs O’s recollections in the later statement are indeed brief. They are also generic with little detail around what exactly was said, by whom, and where. And while the PR says the later statement relates to all the timeshare purchases Mr and Mrs O made, the singular is used in words such as “purchase”.

Indeed, as there isn’t any other evidence on file to corroborate Mr and Mrs O’s very recent evidence about Mr O’s motivation at the Time of Sale, there seems to me to be a very real risk that their later 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 later written recollections the weight necessary to find that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

And in the absence of compelling testimony from Mr and Mrs O that the investment element of Fractional Club membership was the motivation behind Mr O’s purchase at the Time of Sale, I am not persuaded it was.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr O’s decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e. a profit). And for that reason, I do not think the credit relationship between Mr O and the Lender was unfair to him 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 Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

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

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

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

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

But I don't think *Hopcraft, Johnson and Wrench* assists Mr O 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.

Based on what I've seen, 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 O 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.

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 O, 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.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, no payment between the Lender and the Supplier, such as a commission, was

payable when the Credit Agreement was arranged 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 commercial 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 O.

### **Section 140A: 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 O and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis."

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 O's Section 75 claim, and I was 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 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 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 relationship between Mr O and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the Fractional Club membership was sold to him as an investment at the Time of Sale. It's also reiterated its argument that the payment of commission by the Lender to the Supplier 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 an unfair credit relationship?**

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

Part of my assessment of Mr and Mrs O's later statement 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 I remain of the view that given the timing of the later statement, there is a risk that the testimony within was coloured by 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 also said 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 the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr O'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 O and the Lender was unfair to him.

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

I responded to the PR's concerns about the commission arrangements in place at the Time of Sale at length in my PD. The PR has not said anything in response that persuades me I need to reconsider the provisional findings I reached.

#### **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 O and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. 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 O'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 O's complaint about Shawbrook Bank Limited for the reasons provided.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 12 March 2026.

Alex Salton  
**Ombudsman**