

The complaint

Mr and Mrs 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 them 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 'Signature Collection' – which they bought on 13 April 2015 (the 'Time of Sale'). After trading in part of their existing timeshare membership, they paid £21,580 for 2,090 fractional points (the 'Purchase Agreement').

Signature Collection 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. However, the Signature Collection differed from other fractional 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 and Mrs O paid for their Signature Collection membership by taking finance of £21,580 from the Lender (the 'Credit Agreement').

Mr and Mrs 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.

The Lender dealt with Mr and Mrs O's concerns as a complaint and issued its final response letter on 21 February 2024, rejecting it on every ground.

The complaint was then 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 and Mrs 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 2 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 and Mrs O's complaint was made for several reasons, which included that the Supplier misrepresented the Signature Collection membership at the Time of Sale as it told them they had purchased an investment which would considerably increase in value and that they 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 and Mrs O's Section 75 claim was time barred under the LA before they 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 and Mrs O entered into the purchase of their timeshare based on the alleged misrepresentations of the Supplier – which they say they relied on. Further, as the loan from the Lender was used to help finance the purchase, it was when they entered into the Credit Agreement that they suffered a loss.

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

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

I've already explained why I don't think the Lender acted unfairly or unreasonably when it rejected Mr and Mrs 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 and Mrs 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 Signature Collection membership, including the contractual documentation and disclaimers made by the Supplier;
3. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements;
4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
5. The inherent probabilities of the sale given its circumstances; and, when relevant
6. 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 and Mrs O and the Lender given their circumstances at the Time of Sale.

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

Mr and Mrs 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 and Mrs 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 and Mrs O was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship 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 them.

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 it. However, it looks to me like Mr and Mrs O 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 the lending doesn't look like it was unaffordable for them, 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 and Mrs O experiencing a financial loss – such that I can say that the credit relationship in question was 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 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 and Mrs O 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 and Mrs O may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their 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. They also went on to upgrade their Signature Collection membership at a later date, which I find difficult to understand if the reason they went ahead with the purchase in question was because they were pressured into it. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs O 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 and Mrs O's credit relationship 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 relationship 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 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 and Mrs O the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it's 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 and Mrs 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 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 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 Signature Collection as an "investment" or quantifying to prospective purchasers, such as Mr and Mrs 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 Signature Collection membership as an investment. So, I accept that it's also possible that Signature Collection membership was marketed and sold to Mr and Mrs 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 and Mrs O 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 Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr and Mrs 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 and Mrs O and the Lender that was 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 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 they decided to go ahead with their purchase.

I mentioned earlier in this provisional decision that the Signature Collection differed from the other types of fractional timeshare offered by the Supplier. There were better standards of accommodation on offer, as well as the ability to stay in the Allocated Property once a year.

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.

This explains that Mrs O liked how her timeshare membership prior to purchasing Signature Collection was for life as her children could inherit this and continue having holidays. And that "one of the biggest selling points" of the previous membership was "the idea of a holiday every year that was easy to organise." Mrs O says that she and her husband did not manage their points well under their previous membership and they accumulated. She found it "stressful" thinking about where and when to go on holiday, and what accommodation to choose to meet her family's needs, particularly as the points would expire if they weren't used.

Mrs O then says that when she was introduced to Signature Collection membership, "this seemed to be the solution to [their] problem – one week every year in the same apartment, same week." She says they "were thrilled with the accommodation", and that she recalls "leaving Malaga in 2015 after purchasing the signature and crying at the airport to [her] husband and feeling that [she] didn't deserve it and that the signature was too luxurious and extravagant."

I acknowledge that Mrs O goes on to say "we were told that the membership now

had a life span of 25 (or 15 – I can't remember) years and that at the end of the period of years our investment would be maturing and give us a return." She goes on to say that she "was reluctant to not have the life membership but was reassured by the idea of a financial return – like a pension – this made it seem as if the monthly loan repayments were paying into something that we would get back."

But given the emotional attachment Mrs O had to the standard of accommodation available under Signature Collection membership, and as she says "one week every year in the same apartment" seemed to be "the solution to [their] problem", I find I am unable to conclude that any breach of Regulation 14(3), if it did indeed occur, was material to her and Mr O's purchasing decision at the Time of Sale. Having carefully weighed up her recollections in the "Statement of Misrepresentation", the evidence instead points to the motivation for the purchase being the higher standards of accommodation and the ability to stay in the Allocated Property.

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."

However, I find that I should not place as much weight on this later statement for several reasons. These include that it is far less detailed than the "Statement of Misrepresentation", which clearly relates in large part to the Time of Sale. The later statement is generic with little detail around what exactly was said, by whom, and where. And while the PR says it relates to all the timeshare purchases Mr and Mrs O made, the singular is used in words such as "purchase". It was also provided 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, so there is a real risk it has been coloured by the findings in that case.

Having considered the available evidence in the round, I am not persuaded that a breach of Regulation 14(3), if it did indeed occur, was material to Mr and Mrs O's purchasing decision at the Time of Sale.

That doesn't mean they weren'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 and Mrs O don't persuade me that their purchase was motivated by their 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 they 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 and Mrs O's decision to purchase this 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 they would have pressed ahead with their 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 and Mrs O and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

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

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

I am now in a position to finalise my decision.

What I've decided – and why

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

I've considered the case afresh following the response from the PR. 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 and Mrs O and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to them as an investment at the Time of Sale. It's now also argued for the first time 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

In my PD, I explained why I was not persuaded that the investment element of Signature Collection membership was the motivation for Mr and Mrs O's purchase. I have carefully considered the PR's further comments but have not been persuaded to change my view of this. I am still of the view that I should place more weight on the "Statement of Misrepresentation" than the later statement, for the reasons I have already explained.

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 for the reasons set out in my PD, I do not find such investment motivation in this case.

The PR 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 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 and Mrs 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 and Mrs O and the Lender was unfair to them.

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 and Mrs O 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 and Mrs 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 them 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 and Mrs O.

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 and Mrs O 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 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 and Mrs O.

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 and Mrs O.

Overall conclusion

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

My final decision

My final decision is to not uphold Mr and Mrs 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 and Mrs O to accept or reject my decision before 12 March 2026.

Alex Salton
Ombudsman