DRN-6167895

Financial Ombudsman Service

The complaint

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

What happened

Mr and Mrs J purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 16 January 2018 (the 'First Time of Sale'). They entered into an agreement with the Supplier to buy 1,380 fractional points at a cost of £18,995 (the 'First Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs J more than just holiday rights. It also included a share in the net sale proceeds of a property named on the First Purchase Agreement (the 'First Allocated Property') after the end of their membership term.

Mr and Mrs J paid for their Fractional Club membership by taking finance of £18,995 from the Lender (the 'First Credit Agreement').

Mr and Mrs J purchased membership of a different type of timeshare (the 'Signature Collection') from the Supplier on 17 September 2019 (the 'Second Time of Sale'). After trading in their previous membership, they paid £11,549 for 1,820 fractional points (the 'Second Purchase Agreement').

Signature Collection membership was also asset backed and included a share in the net sale proceeds of a property named on the Second Purchase Agreement (the 'Second Allocated Property') after the end of Mr and Mrs J's membership term. However, the Signature Collection differed from other timeshares offered by the Supplier, including the Fractional Club, in that members had preferential rights to stay in their allocated property, and the properties were said to be more luxurious.

Mr and Mrs J paid for their Signature Collection membership by taking finance of £30,126 from the Lender (the 'Second Credit Agreement'). The amount borrowed exceeded the purchase price as the outstanding balance under the First Credit Agreement was consolidated into the Second Credit Agreement.

Mr and Mrs J – using a professional representative (the 'PR') – wrote to the Lender on 5 May 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.

As the Lender was unable to issue a final response to the complaint, the PR referred it to the Financial Ombudsman Service on 19 April 2023. It was assessed by an Investigator who, having considered the information on file, upheld Mr and Mrs J's concerns about the First Time of Sale but rejected their concerns about the Second Time of Sale.

Both sides disagreed with the parts of the assessment that were not in their favour. So, the complaint was passed to me to decide.

I considered the matter and issued a provisional decision (the 'PD') dated 4 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.
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> **Section 75 of the CCA: the Supplier's misrepresentations at the Times of Sale**
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> 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.
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> It was said in the Letter of Complaint that the Fractional Club and Signature Collection memberships were misrepresented by the Supplier at the Times of Sale because Mr and Mrs J were:
>
> 1. Told that they had purchased investments that would "considerably appreciate in value".
> 2. Promised a considerable return on their investments because they were told that they would own shares in properties that would considerably increase in value.
> 3. Told that they could sell their Fractional Club and Signature Collection memberships to the Supplier or easily to third parties at a profit.
> 4. Made to believe that they would have access to the holiday apartments 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 shares 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, 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 the Fractional Club and Signature Collection memberships were misrepresented at the Times 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 the Fractional Club and Signature Collection memberships were misrepresented for these reasons, I don't think they were.

So, while I recognise that Mr and Mrs J – and the PR – have concerns about the way in which the Fractional Club and Signature Collection memberships were sold by the Supplier, when looking at the claims under Section 75 of the CCA, I can only consider whether there were factual and material misrepresentations 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 Mr and Mrs J's Section 75 claims.

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

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Times of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Times of Sale, including the contractual documentation and disclaimers made by the Supplier;
3. The commission arrangements between the Lender and the Supplier at the Times 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 Times of Sale;
5. The inherent probabilities of the sales given their 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 relevant credit relationships between Mr and Mrs J and the Lender.

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

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

The PR says, for instance, that the right checks weren't carried out before the Lender

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

Connected to this is the suggestion by the PR that the Credit Agreements were arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreements. However, it looks to me like Mr and Mrs J 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 the Fractional Club and Signature Collection memberships. And as none of the lending looks like it was unaffordable for them, even if the one or more of the Credit Agreements were arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mr and Mrs J experiencing a financial loss – such that I can say that the credit relationships in question were unfair on them as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate them, even if the loans weren't arranged properly.

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

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

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

Shares in the Allocated Properties clearly constituted investments as they offered Mr and Mrs J the prospect of a financial return – whether or not, like all investments, that was more than what they first put into them. But it's important to note at this stage that the fact that Fractional Club and Signature Collection membership included investment elements did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract <u>as an investment</u>. 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 and Signature Collection. They just regulated how such products were marketed and sold.

To conclude, therefore, that the Fractional Club and Signature Collection memberships were marketed or sold to Mr and Mrs J as investments 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 memberships to them as investments, i.e. told them or led them to believe that Fractional Club and 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 the Fractional Club and Signature Collection memberships were marketed and/or sold by the Supplier at the Times of Sale as investments 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 and Signature Collection as an "investment" or quantifying to prospective purchasers, such as Mr and Mrs J, 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 the Fractional Club and Signature Collection memberships as investments. So, I accept that it's also possible that the Fractional Club and Signature Collection memberships <u>were</u> marketed and sold to Mr and Mrs J as investments in breach of Regulation 14(3).

However, whether or not there were breaches of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Would the credit relationships between the Lender and Mr and Mrs J 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 and Mrs J and the Lender under the Credit Agreements and related Purchase Agreements as the case law on
Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

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

But on my reading of the evidence before me, the prospect of a financial gain from the Fractional Club and Signature Collection memberships was not an important and motivating factor when Mr and Mrs J decided to go ahead with their purchases.

Included in the PR's initial submissions for this complaint was a statement from Mr

and Mrs J containing their recollections of their interactions with the Supplier. The statement is undated, but the PR says it was taken on 23 April 2021.

In the statement, Mr and Mrs J say the following when recalling the First Time of Sale:

> "The presentation was based on taking the deal that day as it was a one time offer and to be fair we thought it would be good for us as the points could be used at other resorts and not just [Supplier resorts]. The selling point was being able to use the points in Madeira. We have friends there and their daughter was getting married later in the year and we were invited, so we used the points for that. The other selling point was that they offered us [a] free week in Spain at their Signature suites Resort.
>
> […]
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> We did use the points to go to our friend's daughter's wedding[…]"

It is clear from the extract of the statement above that Mr and Mrs J's motivation for the purchase at the First Time of Sale was the holiday benefits provided under Fractional Club membership and not the investment element. They had plans to attend a wedding in Madeira and thought the points could be used for that. They were also offered a 'free' holiday to Spain. In Mr and Mrs J's words, these were the 'selling points'. So, I am not persuaded that any breach of Regulation 14(3), if it did indeed occur, was material to their purchasing decision at the First Time of Sale.

Turning to the Second Time of Sale, Mr and Mrs J say the following in their statement:

> "Someone came to get us at our room at 9.00am and took my wife and I for breakfast. We were then taken to the presentation area and we were told we were VIPs. We were introduced to presenters one of whom took us round the resort to 3 different apartments then back to the presentation. A lot of time was taken to show us how we could use points to get the holidays that we wanted. They told us we should upgrade to [Signature Collection membership] as it was a good investment. This is where I got lost.
>
> […]
>
> We did take the decision to purchase based on the verbal statements made by the representatives […]"

I acknowledge that Mr and Mrs J say that they made the decision to purchase based on comments made by the sales representative(s). But it's not clear to me which comments in particular motivated them to purchase Signature Collection membership. They have referenced both what the sales representative(s) told them about how to use their points for the holidays they wanted and the investment potential. They also have not explained why, if the investment element was the motivation for the purchase, what it was about this that appealed to them.

And given Mr and Mrs J say they "got lost" when the sales representative(s) discussed the investment potential, that does not suggest to me that they bought Signature Collection membership in the hope or expectation of a financial gain or profit. Having carefully considered their recollections in the round, I am not persuaded that the motivation for their purchase at the Second Time of Sale was the

investment element of Signature Collection membership.

That doesn't mean they weren't interested in the shares 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 and Mrs J 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 memberships as investments in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs J's decisions to purchase these 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 and Mrs J and the Lender were 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 relationships between Mr and Mrs J 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 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 J's Section 75 claims, and I was not persuaded that the Lender was party to credit relationships with them under the Credit Agreements that were unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

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

I am now in a position to finalise my decision.

What I've decided – and why

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

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

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

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

The PR's further comments in response to the PD only relate to the issue of whether the credit relationships between Mr and Mrs J and the Lender were unfair. In particular, the PR has provided further comments in relation to whether the Fractional Club and Signature Collection memberships were sold to them as investments at the Times of Sale. It's now also argued for the first time that the payment of commission by the Lender to the Supplier led to unfair credit relationships.

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

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

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

In my PD, I explained why I was not persuaded that the investment element of the Fractional Club and Signature Collection memberships was the motivation for Mr and Mrs J's purchases. I have carefully considered the PR's further comments but have not been persuaded to change my view of this.

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 membership because of the 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, and those that follow, I do not find such investment motivation in this case.

The PR says that I have "placed undue weight on selective extracts" of Mr and Mrs J's statement. For the avoidance of doubt, I considered the entirety of their statement, along with all the available information, when reaching my provisional findings.

When coming to the findings in my PD, I noted that Mr and Mrs J say that at the First Time of Sale, the sales representative(s) told them that Fractional Club membership was an "investment". But this is simply a description of what they were told by the sales representative(s) and does not explain the motivation for their purchase, which for the reasons set out in my PD, I'm satisfied was holiday related.

And although Mr and Mrs J say that at the Second Time of Sale the sales representative(s) told them they should upgrade because it was a "good investment", no explanation is given for why this was the case. In fact, the thrust of what Mr and Mrs J have said is that they did not have a good understanding of how the purchase price had been arrived at taking into account their existing finance and the trade-in of their existing membership. In that context, I am not persuaded that Mr and Mrs J made the purchase because they were convinced by the Supplier that it was a good investment.

The PR says that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my PD, the Timeshare Regulations did not ban products such as the Fractional Club and 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 memberships as investments in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr and Mrs J's decisions to make the purchases were motivated by the prospect of a financial gain. And for that reason, I still don't think the credit relationships between Mr and Mrs J and the Lender were unfair to them.

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

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

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

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

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

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

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

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

From my reading of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, it sets out principles which apply to credit brokers other than car dealer credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this

complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under Rule 3.6.4 of the FCA's Dispute Resolution rules ('DISP').

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

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

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

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

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 Agreements wasn't high. At the First Time of Sale, it was £949.75, which was only 5% of the amount borrowed and even less than that (4.6%) as a proportion of the charge for credit. And at the Second Time of Sale, it was £1,506.30, which again was 5% of the amount borrowed and 4.6% as a proportion of the charge for credit. So, had Mr and Mrs J known at the Times of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr and Mrs J wanted the Fractional Club and Signature Collection memberships and had no obvious means of their own to pay for them. And at such a low level, the impact of commission on the cost of the credit they needed for timeshares they wanted doesn't strike me as disproportionate. So, I think they would still have taken out the loans to fund their purchases at the Times 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 Agreements. And as it wasn't acting as an agent of Mr and Mrs J but as the supplier of contractual rights they obtained under the Purchase Agreements, the transactions don't strike me as ones with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreements and thus a fiduciary duty.

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

S140A conclusion

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

Commission: the alternative grounds of complaint

While I've found that the credit relationships weren't unfair to Mr and Mrs J for reasons relating to the commission arrangements between the Lender and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to their complaint about unfair credit relationships. 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 payments of commission from the Lender without telling Mr and Mrs J (i.e. secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the Times of Sale insofar as it was relevant to disclosing the commission arrangements between them.

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr and Mrs J a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to them. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Times of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think they would still have taken out the loans to fund their purchases at the Times of Sale had there been more adequate disclosure of the commission arrangements that applied at those times.

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 J's Section 75 claims, and I am not persuaded that the Lender was party to credit relationships with them under the Credit Agreements that were unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

My final decision

My final decision is to not uphold Mr and Mrs J'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 J to accept or reject my decision before 19 March 2026.

Alex Salton
Ombudsman