DRN-5903314

The complaint

Mr E and Miss R complain Shawbrook Bank Limited (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with them under Section 140A of the CCA.

Mr E and Miss R are represented in their complaint by a professional representative ("PR").

What happened

I issued a provisional decision on Mr E and Miss R's complaint on 8 October 2025, in which I set out the background to the case and my provisional findings on it. A copy of that provisional decision is appended to, and forms a part of, this final decision, so it's not necessary to go over the details again. However, in very brief summary:

- Mr E and Miss R entered an agreement to buy a timeshare (the "Purchase Agreement") from a timeshare provider (the "Supplier") on 25 August 2016 (the "Time of Sale"), for £25,000. After trading in a previous timeshare, the balance to pay was £5,845. The balance was financed by a loan of £25,062 from the Lender (the "Credit Agreement"), which included a significant amount of consolidation of existing debt.

- The timeshare was a type of asset-backed timeshare which entitled Mr E and Miss R to more than holiday rights. It also entitled them to a share in the proceeds of a property named on their purchase agreement (the "Allocated Property") after their contract came to an end.

- Mr E and Miss R later complained, via a professional representative ("PR"), to the Lender about a number of concerns which included misrepresentations by the Supplier giving them a claim against the Lender under Section 75 of the CCA, and matters giving rise to an unfair credit relationship between them and the Lender.

- The Lender rejected the complaint and it was then referred to the Financial Ombudsman Service for an independent assessment.

In my provisional decision I said I didn't think the complaint should be upheld. Again, my full findings can be found in the appended provisional decision, but in very brief summary:

- The Lender had not been unfair or unreasonable in declining Mr E and Miss R's Section 75 claim for misrepresentation because:

    - Some of the alleged misrepresentations were in fact true statements or statements of opinion which there was no evidence to demonstrate were not honestly held.

    - The remaining alleged misrepresentations were too vague and lacking in colour and context to be able to draw a positive conclusion that the Supplier had made false statements of specific fact to Mr E and Miss R.

- The Lender had not participated in a credit relationship with Mr E and Miss R that was unfair to them because:

    - Regardless of whether the Lender had carried out appropriate checks before lending to Mr E and Miss R, there was a lack of evidence the loan had been unaffordable for them at the time.

    - The Credit Agreement had not been arranged by an unauthorised credit broker.

    - There was insufficient persuasive evidence that Mr E and Miss R had only signed up for the timeshare because their ability to make a choice had been significantly impaired by pressure from the Supplier. I noted they had been given a cooling off period to cancel their purchase, which they'd not used.

    - While unfair terms within the Purchase Agreement had been referred to by PR, I couldn't see that these terms had been operated in an unfair way with respect to Mr E and Miss R or that it was likely they would be in the future.

    - It was *possible* the Supplier had breached Regulation 14(3) of the Timeshare Regulations by marketing the timeshare to Mr E and Miss R as an investment, but I thought it was *unlikely* in this case. I wasn't convinced, based on Mr E and Miss R's testimony, that the Supplier had sold or marketed the timeshare to them in this way. In particular, when describing what had happened at the Time of Sale, Mr E and Miss R hadn't mentioned any such marketing or sale of the product by the Supplier. It was only in separate section at the end of their witness statement – and which was worded identically to other statements I'd seen – where they made this allegation. I wasn't convinced I could rely on their testimony as positive evidence that the Supplier had breached Regulation 14(3). I also had some concerns over when Mr E and Miss R had been asked to recall what had happened. PR said they'd made their witness statement in 2021, but it was unsigned and undated, and had only been received by the Financial Ombudsman Service in 2023, after events which could have influenced their recollections.

I noted that PR had also complained of an alleged payment of commission by the Lender to the Supplier for arranging the Credit Agreement. At the time of my provisional decision I didn't have enough information to reach a conclusion on this point, and said I would provide an update when I knew more.

Between writing my provisional decision and this final decision, I received evidence to show that the Lender had not paid any commission to the Supplier for arranging the Credit Agreement. I also found that there wasn't anything else about the commission arrangements which could have led to the credit relationship between Mr E and Miss R, and the Lender, being unfair to them.

I recently wrote to PR to explain my findings on the question of commission, and asked that it let me have any further submissions it wanted me to consider. PR hasn't provided any further submissions on this point, but it has provided various additional arguments relating to the alleged sale of the timeshare as an investment. The Lender has accepted the provisional decision.

The case has now been returned to me to decide.

The legal and regulatory context

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

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

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

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

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

The FCA's Principles

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

- Principle 6
- Principle 7
- Principle 8

What I've 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.

Following the responses from both parties, I've considered the case afresh and 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.

PR's comments in response to the provisional decision relate only to the issue of whether the credit relationship between Mr E and Miss R and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to Mr E and Miss R as an investment at the Time of Sale, and the impact of this on their purchasing decision.

As outlined in my provisional decision, 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 provisional decision. 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 relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my provisional decision. So, I'll focus here on 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

I could fairly summarise PR's arguments in response to the provisional decision as follows:

- Mr E and Miss R's witness statement had been made prior to any relevant external events, such as the outcome of the case of *Shawbrook and BPF v FOS*[1], so it could not have been influenced by them. It said it had attached a screenshot to an email to show when the statement had been uploaded onto the system of a firm of Spanish lawyers. No screenshot was attached, nor did PR provide a date.

- Studies had shown high pressure sales would tend to lead to someone having vivid recollections of what happened during that process, for a variety of reasons.

- The fact that Mr E and Miss R had been interested in holidays didn't mean they weren't interested in the investment aspects of the timeshare they'd bought. Investment didn't need to be the primary or even the main motivation for it to be material to a person's purchasing decision.

- Mr E and Miss R had clearly stated that *"We were informed that the purchase price for our timeshare fractional ownership products would be an investment which would see a profit when the properties were sold in 18 years' time".* This was evidence that the Supplier had breached Regulation 14(3) of the Timeshare Regulations when selling the timeshare to them.

I think I made it clear in my provisional decision that my concern over the provenance of Mr E and Miss R's witness statement was not the only problem with their testimony. Whether their statement was written in 2021 or late in 2023, or was amended at some point within that window of time, isn't determinative. And that's because I don't feel I can rely on the content of their witness statement as making a positive case that the Supplier breached Regulation 14(3) at the Time of Sale.

While PR has repeated the paragraph from the witness statement in which Mr E and Miss R apparently recalled the Supplier marketing the product as an investment, PR hasn't responded to the concerns I expressed about that section of the statement. This is what I had to say about that part of the witness statement in the provisional decision:

> *"On the face of it, this seems to be a clear recollection by Mr E and Miss R that the Supplier sold the Fractional Club membership to them as an investment. However, this point is inconsistent with the narrative part of their witness statement, which makes no mention of the Supplier having sold the product in this way. I also note that I have seen this paragraph, in identical form (other than the number of years in which the properties would be sold), included in other witness statements PR has provided*

[1] 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

for complaints from other clients. It appears to be a standard paragraph. I don't know how it came to be included in the list of bullet points at the end of the witness statement, or if Mr E and Miss R saw or agreed to its accuracy given its apparent inconsistency with the rest of their recollections. As I said earlier, the statement is neither signed nor dated.

In the circumstances, given the level of colour and context to the narrative part of the witness statement in which Mr E and Miss R don't recall the product being sold or marketed as an investment, and the apparently generic bullet point in which this allegation is made later in the document, I'm minded to conclude that it's unlikely the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale. It follows that I don't think the credit relationship between Mr E and Miss R, and the Lender, was rendered unfair to them for this reason."

Nothing PR has said has addressed the findings I made in that part of the provisional decision, and I see no reason to depart from those findings. It follows that I don't think there's sufficient persuasive evidence the Supplier breached Regulation 14(3) at the Time of Sale in this specific complaint. Because I don't think there was a breach, it's not necessary for me to address the points PR has made about Mr R and Miss R's motivations for making their purchase.

The alleged payment of a commission by the Lender to the Supplier

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

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

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

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

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

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

1. The size of the commission as a proportion of the charge for credit;

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

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

But I don't think *Hopcraft, Johnson and Wrench* assists Mr E and Miss R 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 E and Miss R, nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led Mr E and Miss R 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 is for the reasons set out below that I don't currently think any such failure is itself a reason to find the credit relationship in question unfair to Mr E and Miss R.

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 E and Miss R but as the supplier of contractual rights they obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreement and thus a fiduciary duty.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, the Lender didn't pay the Supplier any commission at the Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not currently persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr E and Miss R.

My final decision

For the reasons explained above, and in the appended provisional decision, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Miss R to accept or reject my decision before 24 February 2026.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at the same broad conclusions as our Investigator, but I'm issuing this provisional decision to allow the parties to the complaint a further opportunity to make submissions before I make my decision final. I am also currently unable to arrive a final conclusion on one aspect of the complaint.

The deadline for both parties to provide any further comments or evidence for me to consider is **22 October 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from Mr E and Miss R, or if they tell me they accept my provisional decision, I may arrange for the complaint to be closed as resolved without a final decision.

The complaint

Mr E and Miss R complain Shawbrook Bank Limited (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with them under Section 140A of the CCA.

Mr E and Miss R are represented in their complaint by a professional representative ("PR").

What happened

This complaint relates to a timeshare purchase made by Mr E and Miss R from a timeshare provider (the "Supplier") on 25 August 2016. This was their third purchase from the Supplier and, as far as I'm aware, their last. I've outlined the basic details below:

- The purchase made on 25 August 2016 (the "Time of Sale") was of an increased points holding in the Supplier's "Fractional Club". Mr E and Miss R bought 1,300 points in the Fractional Club, which could be used to book holiday accommodation annually. They had previously had 950 points. This type of timeshare was also asset-backed, meaning it included a share in the future sale proceeds of a specific timeshare apartment named on Mr E and Miss R's purchase paperwork. The purchase cost £25,000, reduced to £5,845 after trading in the existing 950 point membership.

- The Supplier arranged a loan (the "Credit Agreement") with the Lender for the balance of the purchase price along with the consolidation of a significant amount of debt relating to Mr E and Miss R's previous purchase. The loan amount was £25,062 and this was repayable over 180 months at £289.60 per month. The last information available about this loan was that it was still in repayment.

- In January 2022, through PR, Mr E and Miss R complained to the Lender, seeking to find it responsible for the Supplier having mis-sold the timeshare and associated loan. The individual mis-selling concerns raised by PR can be found in the table below, but broadly-speaking they included misrepresentations for which Mr E and Miss R sought to hold the Lender liable under Section 75 of the CCA, and matters which were alleged to have rendered the credit relationship between them and the Lender unfair under Section 140A of the CCA.

The Lender rejected Mr E and Miss R's concerns, which were then referred to the Financial Ombudsman Service. The case was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mr E and Miss R disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. While the case was waiting to be assigned to an Ombudsman, PR made additional arguments relating to the matter of commission paid by the Lender to the Supplier, alleging this was another aspect of the purchase which had rendered the credit agreement unfair to Mr E and Miss R.

The legal and regulatory context

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

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context here.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having done that, I do not 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.

I think it's also important at this stage to outline very briefly the general grounds on which Mr E and Miss R seek redress from the Lender in relation to what are, at least in part, the *Supplier's* alleged wrongdoings as opposed to the Lender's. The grounds are that Mr E and Miss R have a claim under Section 75 of the CCA, and Section 140A of the CCA.

Section 75 of the CCA gives a person who has purchased goods or services with certain kinds of credit, a right to claim against their lender in respect of any breach of contract or misrepresentation on the part of the supplier of those goods or services. This is subject to certain technical conditions being met, which I am satisfied have been met in this case.

Section 140A of the CCA operates in a more complex manner. Insofar as is relevant to Mr E and Miss R's case, it means that the credit relationship between them and the Lender can be found unfair because of anything done (or not done) by, or on behalf of, the Lender.

An unfair credit relationship can also be based on the terms of a related agreement (such as the agreement to buy the timeshare) and, when combined with Section 56 of the CCA, on anything done or not done by the Supplier on the Lender's behalf before the making of the timeshare or loan agreements. The Supplier's acts or omissions during the process of negotiations leading up to the purchase are deemed to be the Lender's responsibility.

In the interests of efficiency and ease of reading, I have set out my findings in a table format. Where a particular finding requires further explanation or analysis, I have indicated this and provided the further explanation below the table.

Table of Summarised Findings

Section 75 - Misrepresentations	**Reason why this complaint doesn't succeed**
It was falsely represented that the product was an investment that would "considerably appreciate in value".	There's insufficient persuasive evidence this was said. If it was said, it would not be untrue to describe the product as an investment as it contained investment features. Any statements regarding future value are likely to have been statements of honest opinion in the absence of evidence to show otherwise.
It was falsely represented that there would be a considerable return on investment because the purchase involved a share in a property that would increase in value.	As per the point above, there is insufficient persuasive evidence these representations were made. If they were, there's insufficient evidence they were anything other than statements of honest opinion.
It was falsely represented that the Fractional Club membership could be sold back to the Supplier or easily to third parties at a profit.	There's very little colour or context to this allegation, meaning it's difficult to conclude the Supplier represented this to be the case. Mr E and Miss R would also have signed to say they understood the Supplier would not buy back the membership.[2]
It was falsely represented that Mr E and Miss R would have access to "the holiday apartment" at any time all year round.	This is a vague allegation which also lacks sufficient detail, context or colour to demonstrate the Supplier made such statements.
Matters allegedly rendering the credit relationship unfair	**Reason why this complaint doesn't succeed**
Mr E and Miss R were pressured into making the purchase.	There is little evidence of what specifically the Supplier said or did which meant Mr E and Miss R felt they had no choice but to purchase. Mr E and Miss R also did not use the cooling-off period to cancel the purchase, which I would have expected had they only purchased because they were pressured into doing so.
The Lender failed to carry out the creditworthiness/affordability checks required by industry guidance or regulations.	Mr E and Miss R have not provided evidence that the loan was actually unaffordable, which would need to be shown if the complaint were to succeed on this point.

[2] It was the Supplier's usual practice to require purchasers to sign to agree to a declaration which included a statement to this effect. The evidence supplied in this case has been very limited, and I have not seen a copy of the declaration relating to the purchase. However, on balance I think it's likely, based on my experience of how the Supplier sold timeshares, that such a declaration would have been signed in this case.

The Credit Agreement was arranged by an unauthorised credit broker, meaning it was unenforceable.	It appears the entity which arranged the Credit Agreement held the correct permissions from the Financial Conduct Authority at the relevant time, so the agreement was not arranged by an unauthorised credit broker.
The agreement to purchase the timeshare included terms which were unfair to Mr E and Miss R, such as terms allowing the Supplier to forfeit the timeshare for minor breaches of the agreement.	While I'm aware the Supplier's standard agreements contained terms which could have been operated in an unfair way, I've not seen evidence they have been operated in an unfair way with respect to Mr E and Miss R, nor that it's likely this would happen in future.
The Supplier marketed and sold the membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations.	Based on the available evidence, including a witness statement from Mr E and Miss R, I don't think it's likely the Supplier marketed or sold the product in this way. **See further details below.**
The Lender paid the Supplier a commission for arranging the Credit Agreement which was insufficiently disclosed to Mr E and Miss R.	I'm currently unable to arrive at a conclusion on this point, due to the necessity to consider the implications of a recent Supreme Court judgment. **See further details below.**

I'll now set out the expanded reasons for my current position on the allegation that the Supplier sold or marketed the Fractional Club membership as an investment, and the matter of commission.

The Supplier's marketing and sale of the Fractional Club membership

As I've noted above, the legal and regulatory context to complaints such as this has now been widely shared through the publication of hundreds of decisions by the Financial Ombudsman Service. So I'll say only that for the credit relationship between Mr E and Miss R, and the Lender, to be rendered unfair to them, the following two things would both need to be true:

1. The Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing or selling the Fractional Club membership to them as an investment; and

2. This improper selling or marketing of the product had a material impact on their decision to go ahead with their purchase.

Prior to August 2023, we had no evidence from Mr E or Miss R, in their own words, as to what happened at the Time of Sale or what their state of mind was at that time. We had only the letter of complaint from PR, which was identical in nearly all respects to numerous other letters of complaint I have seen from PR on behalf of other clients. In other words, it was generic in nature and of very little assistance in determining what may have happened at the Time of Sale or why Mr E and Miss R made this purchase.

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 we received a witness statement from Mr E and Miss R, via PR. This is unsigned and undated, but PR says it was taken at some point in May 2021. 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. In light of this, I find it difficult to understand why the Financial Ombudsman Service was only given such evidence when it was.

The witness statement consists of three pages setting out a narrative account of Mr E and Miss R's experiences with the Supplier. This is followed by a little over one page of bullet points. Nowhere in the three-page narrative do Mr E or Miss R state or suggest that the Supplier marketed or sold any of the products they purchased as investments. What they appear to recall is how the Supplier emphasised the holiday benefits of the products they were trying to sell. In relation to the August 2016 purchase, Mr E and Miss R recalled that first the Supplier had suggested they needed more points for their holiday needs, but they had disagreed. The Supplier had then tried to sell them a property, which they'd refused as they couldn't afford it. Then, the Supplier had tried to sell them a "Signature Suite", which was also outside of their price range. Finally, the Supplier had encouraged them to buy more points because it would mean they could afford to book better accommodation, and they had agreed to purchase the additional points after this.

It doesn't appear to me from Mr E and Miss R's account of events, that the Supplier framed its offering in August 2016 as any kind of investment. Nor does it appear that the prospect of the purchase being an investment was something which was in their minds at the time they decided to go ahead.

The bullet-pointed section of the witness statement is quite different. It contains the following point:

"We were informed that the purchase price for our timeshare fractional ownership products would be an investment which would see a profit when the properties were sold in 18 years' time. We were told that Spanish house prices had fluctuated over the last few years but generally they performed similar to the UK, doubling every 8-10 years. We were led to believe that we owned a fraction of the apartment, similar to a leasehold flat, which had a monetary resale value that could be recouped at the end of the term; we now understand that this timeshare has little or no value and is unlikely to be sold with repayment of our purchase price and profits as expected."

On the face of it, this seems to be a clear recollection by Mr E and Miss R that the Supplier sold the Fractional Club membership to them as an investment. However, this point is inconsistent with the narrative part of their witness statement, which makes no mention of the Supplier having sold the product in this way. I also note that I have seen this paragraph, in identical form (other than the number of years in which the properties would be sold), included in other witness statements PR has provided for complaints from other clients. It appears to be a standard paragraph. I don't know how it came to be included in the list of bullet points at the end of the witness statement, or if Mr E and Miss R saw or agreed to its accuracy given its apparent inconsistency with the rest of their recollections. As I said earlier, the statement is neither signed nor dated.

In the circumstances, given the level of colour and context to the narrative part of the witness statement in which Mr E and Miss R don't recall the product being sold or marketed as an investment, and the apparently generic bullet point in which this allegation is made later in the document, I'm minded to conclude that it's *unlikely* the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale. It follows that I don't think the credit relationship between Mr E and Miss R, and the Lender, was rendered unfair to them for this reason.

Mr E and Miss R's Commission Complaint

One of the concerns raised by PR on Mr E and Miss R's behalf relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. The Supreme Court's recent judgment J*ohnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33* ('*Johnson, Wrench and Hopcraft*') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer–credit brokers. So, once the implications of that judgment become clear, I will finalise my findings on this complaint.

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 E and Miss R'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 provisional decision

For the reasons explained above, I'm not currently minded to uphold this complaint, and will provide an update on the matter of commission when the implications of the Supreme Court judgment have become clear.

Will Culley
Ombudsman