DRN-5912741

The complaint

Mr O's complaint is, in essence, that Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

Background to the complaint

Mr O and Mrs O were members of a timeshare club offered by a timeshare provider ('the Supplier'). Mr O and Mrs O purchased a new membership of a timeshare (the 'Fractional Club') from the Supplier on 14 August 2012 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1494 fractional points at a cost of £12,872 (the 'Purchase Agreement').

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

Mr O and Mrs O paid for their Fractional Club membership by taking finance of £12,872 from the Lender in Mr O's name (the 'Credit Agreement').

Mr O – using a professional representative (the 'PR') – wrote to the Lender on 25 November 2021 (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 O's concerns as a complaint and issued its final response letter on 10 May 2022 rejecting it on every ground, including telling him that he was out of time to make a claim under Section 75 of the CCA.

Mr O then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, thought the claim relating to Section 75 of the CCA was made out of time. The Investigator didn't think Mr O's complaint about him being party to an unfair credit relationship with the Lender under Section 140A of the CCA should be upheld.

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

I considered the matter and issued a provisional decision (the 'PD') dated 14 October 2025. 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. Having done that, I intend saying Mr O's complaint about Section 75 of the CCA has been made out of time for me to consider, and that the complaints I can consider should not 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

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.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mr O could make against 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.

Further, creditors can reasonably reject Section 75 claims that they're first informed about after the claim has become time-barred under the Limitation Act 1980 (the 'LA'). The reason being, that it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court.

Having considered everything, I think Mr O's claim for misrepresentation is likely to have been made too late under the relevant provisions of the LA, which means it would have been fair for the Lender to have turned down his Section 75 claim for this reason.

A claim under Section 75 is a 'like' claim against the creditor. A claim for misrepresentation against the Supplier would ordinarily 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, as per Section 2 of the LA.

But a claim like this one under Section 75 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 for the claim was the Time of Sale, which was 14 August 2012. I say this because Mr O entered into the membership at that time based on the alleged misrepresentations by the Supplier, which he says he relied on. And, as the loan from the Lender was used to finance this membership, it was when Mr O entered into the Credit Agreement, on 14 August 2012, that he suffered a loss.

Mr O first notified the Lender of his Section 75 claim on 25 November 2021. Since this was more than six years after the Time of Sale, I don't think it was unfair or unreasonable of the Lender to reject Mr O's concerns about the Supplier's alleged misrepresentations at the Time of Sale.

However, this is somewhat academic as the alleged misrepresentations are still things the Lender could be responsible to answer under the operation of section 140A CCA. So I have considered them here.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr O and Mrs O were:

1. *Told that they had purchased an investment that would "considerably appreciate in value".*
2. *Promised a considerable return on their investment because they were told that they would own a share in a property that would considerably increase in value.*
3. *Told that they could sell their Fractional Club membership to the Supplier or easily to third parties at a profit.*
4. *Made to believe that they would have access to "the holiday apartment" at any time all year round.*

However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn't any accompanying evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

As for points 3 and 4, while it's possible that Fractional Club membership was misrepresented at the Time of Sale for one or both of those reasons, I don't think it's probable. They've given little to none of the colour or context necessary to demonstrating that the Supplier made false statements of existing fact and/or opinion. And as there isn't any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for these reasons, I don't think it was.

So, while I recognise that Mr O and Mrs O - and the PR - have concerns about the way in which Fractional Club membership was sold by the Supplier, for the reasons I've set out above, I'm not persuaded that it gave rise to an unfair credit relationship.

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.

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

Having considered the entirety of the credit relationship between Mr O and the Lender along with all of 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 Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale;*
2. *The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
3. *Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; and*
4. *The inherent probabilities of the sale given its circumstances.*

I have then considered the impact of these on the fairness of the credit relationship between Mr O and the Lender.

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

Mr O'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 O. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr O was actually unaffordable before also concluding that he lost out as a result and then consider whether the credit relationships with the Lender was unfair to him for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for the Mr O.

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 O knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for Fractional Club membership. And as none of the lending looks like it was unaffordable for him, 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 O's financial loss – such that I can say that the credit relationships in question were unfair on him as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate him, even if the loans weren't arranged properly.

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

I acknowledge that Mr O feels that the presentation he and his wife attended was a lengthy one, but he says little about what was said and/or done by the Supplier during their sales presentations that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. Moreover, they did go on to upgrade their membership – which I find difficult to understand if the reason they went ahead with the purchases in question was because they were pressured into them. And with all of that being the case, there is insufficient evidence to demonstrate that Mr O and Mrs O made the decisions to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

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

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

The Lender does not dispute, and I am satisfied, that Mr O's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club membership as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But the PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mr O was told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

Shares in the Allocated Property clearly constituted an investment as they offered Mr O 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 is important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr O as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to him as an investment, i.e. told him or led him to believe that Fractional Club membership offered him the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

There is evidence in this complaint that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr O and Mrs O, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr O as an investment.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's also possible that Fractional Club membership was marketed and sold to Mr O as an investment in breach of Regulation 14(3).

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

Was the credit relationship between the Lender and the Consumer rendered unfair?

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

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

In the original complaint letter sent by the PR to the Lender in November 2021 the PR says 'The sale transaction was totally illegal, because the timeshare was sold as an investment.' The letter goes on to provide very little substance about why this may have motivated Mr O to buy the Fractional Club membership, and there is no reference to Mr O recalling that he was told the Fractional Club membership offered the prospect of a financial gain.

It would be reasonable to expect that had Mr O been motivated to buy a Fractional Club membership because the Supplier told him he would make a financial gain, he would have raised this in his complaint to the Lender in 2021. But it was only after the Investigator issued their view, and 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 Mr O recalled that the Supplier led them to believe that Fractional Club membership offered them the prospect of a financial gain and the prospect of passing the shares in the Allocated Property on to his children. And as more time that passes between a complaint and the event complained about, the more risk there is of recollections being vague, inaccurate and/or influenced by discussion with others, I find it difficult to understand why the Financial Ombudsman Service was only given such evidence when it was.

Indeed, as there isn't any other evidence on file to corroborate Mr O's more recent evidence about their motivations at the Time of Sale, there seems to me to be a very real risk that the recollections of Mr O and Mrs O were coloured by the judgment in Shawbrook & BPF v FOS. And with that being the case, I'm not persuaded that I can give his written recollections the weight necessary to finding that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

On my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor for Mr O and Mrs O when they decided to go ahead with their purchases. That doesn't mean they weren't interested in a share in the Allocated Properties. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But Mr O's witness statement from May 2024 doesn't persuade me that at the Time of Sale they were motivated by shares in the Allocated Properties, the possibility of a profit, or the prospect of passing the shares in the Allocated Property to their children. Because of this, I don't think breaches of Regulation

14(3) by the Supplier were likely to have been material to the decisions Mr O and Mrs O ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr O and Mrs O's decisions to purchase Fractional Club membership 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 O and the Lender were unfair to him even if the Supplier had breached Regulation 14(3).

The Supplier's alleged breach of Spanish Law and its implications on the Credit Agreement

The PR argues that, because the Purchase Agreement was unlawful under Spanish law in light of certain information failings by the Supplier, I should treat that Agreement and the Credit Agreement as rescinded by Mr O and award him compensation accordingly – in keeping with the judgment of the UK's Supreme Court in Durkin v DSG Retail [2014] UKSC 21 ('Durkin').

However, I note that the Purchase Agreement is governed by English law. So, it isn't at all clear that Spanish law would be held relevant if the validity of the Purchase Agreement were litigated between its parties and the Lender in an English court. For example, in Diamond Resorts Europe and Others (Case C-632/21), the European Court of Justice ruled that, because the claimant lived in England and the timeshare contract governed by English law, it was English law that applied, not Spanish, even though the latter was more favourable to the claimant in ways that resemble the matters seemingly relied upon by the PR.

What's more, as Mr O has more likely than not gone some way to taking advantage of the Purchase and Credit Agreements, an English court might hesitate to uphold a claim for rescission of either Agreement because there are equitable reasons to do so.

Overall, therefore, in the absence of a successful English court ruling on a timeshare case paid for using a point-of-sale loan on similar facts to this complaint, and given the facts and circumstances of this complaint, I'm not persuaded that it would be fair or reasonable to uphold it for this reason."

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

The Lender did not respond to the PD.

The PR also responded – they did not accept the PD and provided some further comments and evidence they wish to be considered.

Having received the relevant responses from both parties, I'm now finalising my decision.

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 Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

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.

The PR's further comments in response to the PD in the main relate to the issue of whether the credit relationship between Mr O and the Lender was unfair. In particular, the PR has

provided further comments in relation to whether the membership was sold to Mr O as an investment at the Time of Sale

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But they didn't make any further comments in relation to those in their response to my PD. Indeed, they haven't said they disagree 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 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?

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mr O and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Time of Sale in relation to Fractional Club membership, including the contractual documentation and disclaimers made by the Supplier;
3. 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 O and the Lender given his circumstances at the Time of Sale.

<u>The Supplier's alleged breach of Regulation 14(3) of the Timeshare regulations</u>

The PR explained in their response to my PD that they hadn't shared the Investigator's view with Mr O, saying *"this was done in order not to influence their recollections".*

The PR also said Mr O hadn't heard about the judgement handed down in Shawbrook and BPF v FOS . The PR said this means Mr O's recollections have not been influenced by either the Investigator's view or the aforementioned judgment.

Part of my assessment of the testimony was to consider when it was written, and whether it may have been affected by external factors such as the widespread publication of the outcome of Shawbrook and BPF v FOS.

I have thought about what the PR has said, but on balance, I don't find it a credible explanation of the contents of Mr O's evidence. Here, the PR responded to our Investigator's view to say that Mr O alleged that Fractional Club membership had been sold to them as an investment and provided evidence from Mr O and Mrs O to that effect. I fail to understand

how Mr O disagreed with the view and PD on the basis that the timeshare was sold as an investment if they didn't know our Investigator's conclusions. It follows, I think it more likely than not, that Mr O and Mrs O did know about our Investigator's view before their evidence was provided.

So, I maintain that there is a risk that Mr O and Mrs O's testimony was coloured by the Investigator's view and/or the outcome in Shawbrook & BPF v FOS. And, on balance, the way in which the evidence has been provided makes me conclude that I can place little weight on it. For the above reasons, along with those I already provided in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr O and Mrs O's purchasing decision.

The PR also said that in the judgment handed down in Shawbrook & BPF v FOS, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my provisional decision, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr O and Mrs O's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mr O and the Lender was unfair to him for this reason.

S140A conclusion

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

Other points

Here, the PR has asked us to determine the rights and obligations of the Lender based on the outcome of a court case in Spain. In my PD, I said that in the absence of a judgment in an English jurisdiction on this issue, I was not persuaded it was fair and reasonable to conclude the loan agreement was able to be set aside. I remain of this view for the following reasons:

- The Lender wasn't a party to the proceedings the PR has referred to, so its' rights under the Credit Agreement have not been determined.
- I still think that the Purchase Agreement is governed by English law for the reason already set out in my PD. The PR has pointed to a different decision of the European Court of Justice that points the other way. But in the absence of any authorities under English law, I'm still not persuaded that (1) the Purchase Agreement, properly governed by English law, could be avoided following the Spanish Judgment to which the PR refers and (2) that the Credit Agreement was also something that could be successfully avoided.

So again, I'm still not persuaded that it would be fair or reasonable to uphold the complaint for this reason.

Conclusion

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

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 6 January 2026.

Paul Lawton
Ombudsman