

## The complaint

Mr W's complaint is, in essence, that Tandem Bank Limited<sup>1</sup> (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.

Mr W is represented in his complaint by a professional representative ("PR").

## What happened

I issued a provisional decision on Mr W's complaint on 6 September 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 W entered an agreement to buy a timeshare (the "Purchase Agreement") from a timeshare provider (the "Supplier") on 11 June 2018 (the "Time of Sale"), for £30,289. After the trade in of a "Trial" membership held by Mr W, the amount to pay was £25,894. This was financed by a loan of £29,725 from the Lender (the "Credit Agreement"), which included the consolidation of some existing debt relating to the Trial membership.
- The timeshare was a type of asset-backed timeshare which entitled Mr W to more than holiday rights. It also entitled him to a share in the proceeds of a property named on his purchase agreement (the "Allocated Property") after his contract came to an end.
- Mr W later complained, via a professional representative ("PR"), to the Lender about a number of concerns which included misrepresentations by the Supplier giving Mr W a claim against the Lender under Section 75 of the CCA, and matters giving rise to an unfair credit relationship between Mr W 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 W's Section 75 claim for misrepresentation because the purchase did not benefit from the protection offered by this section of the CCA, due to the price of the timeshare being over the threshold (£30,000) after which Section 75 ceased to apply. That said, I considered the alleged misrepresentations could still be relevant to the question of whether the

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<sup>1</sup> The appended provisional decision refers to a lender called Tandem Personal Loans Limited. The Lender has clarified that the entity within its group which is responsible for the complaint is Tandem Bank Limited, so this has been corrected in this final decision.

credit relationship was fair, but didn't think the credit relationship had been rendered unfair for this reason 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 W.
- I then considered the other reasons advanced by PR for the credit relationship between Mr W and the Lender being unfair to him. I concluded the Lender had not participated in a credit relationship with Mr W that was unfair to him because:
  - I did not think Mr W's ability to make a choice to enter the Purchase Agreement or not had been significantly impaired by any pressure from the Supplier. I noted that there was a lack of detail about what specifically had been said or done by the Supplier, and that Mr W had been given a cooling off period to cancel the contract, which he'd not used.
  - Regardless of whether the Lender had carried out appropriate checks before lending to Mr W, there was a lack of evidence the loan had been unaffordable for him at the time.
  - The Credit Agreement had not been arranged by an unauthorised credit broker.
  - While it was possible some of the Supplier's terms had the potential to operate in an unfair way, I'd not seen evidence that the terms had operated in that way in Mr W's case, or were likely to operate in that way in the future.
  - It was possible the Supplier had breached Regulation 14(3) of the Timeshare Regulations by marketing the timeshare to Mr W as an investment, but I was not persuaded by Mr W's testimony as to this issue. I had concerns over how late in the process Mr W had been asked to record his memories, after many years and various events that could have influenced his recollections. I didn't think I could attach sufficient weight to his witness statement as a result.

I invited the parties to the complaint to respond to my provisional decision. The Lender accepted the provisional decision. PR didn't agree with the provisional decision, and asked me to consider various additional points, mostly relating to the alleged sale of the timeshare as an investment, but also relating to the alleged non-disclosure of a commission paid by the Lender to the Supplier for arranging the Credit Agreement, and alleged discrepancies in the purchase paperwork. 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 W and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to Mr W as an investment at the Time of Sale. It has also now argued for the first time that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship.

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

PR says it hadn't shared the Investigator's assessment on this complaint with Mr W, saying this was done in order not to influence his recollections. PR said Mr W was also unaware about the judgment handed down in *Shawbrook and BPF v FOS*<sup>2</sup>. PR said this means his recollections have not been influenced by either the Investigator's assessment or the judgment.

PR also argued that 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. That may or may not be the case, but I don't think it assists PR in addressing the concerns I expressed in my provisional decision.

Part of my assessment of Mr W's 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 PR has said, but on balance, I don't find it a credible explanation of the contents of Mr W's evidence. Here, PR responded to our Investigator's assessment to say that Mr W alleged that Fractional Club membership had been sold to him as an investment and it provided evidence from Mr W to that effect. I fail to understand how Mr W disagreed with the assessment on the basis that the timeshare was sold as an investment if he didn't know our Investigator's conclusions. It follows, in my view, that Mr W did know about our Investigator's assessment before his evidence was provided.

So, I maintain that there is a risk that Mr W's testimony, vivid or not, was coloured by later events such as our Investigator's assessment 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 have to treat it with considerable caution and can place very little weight on it, certainly not enough to be able to be persuaded that any breach of Regulation 14(3) was material to Mr W's purchasing decision.

### The discrepancies between dates on the Purchase Agreement and Mr W's timeshare certificate

I will also address a point made by PR regarding the apparent ambiguity in the proposed sale date of the Allocated Property. PR suggests that a delayed sale date could lead to an unfairness to Mr W in the future, as any delay could mean a delay in the realisation of his share in the Allocated Property.

It does appear that the proposed date for the commencement of the sales process, as set out on the owners' certificate, is 31 December 2036. This date indicates that the membership has a term of 19 years. The same date appears in a "Member's Declaration" initialled and signed by Mr W at the Time of Sale. The ambiguity identified by PR is that in the Information Statement provided as part of the purchase documentation it says the following:

*"The Owning Company will retain such Allocated Property until the automatic sale date in **19 years time** or such later date as is specified in the Rules or the Fractional Rights Certificate."* (bold my emphasis).

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<sup>2</sup> *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*').

While the wording of the Information Statement appears generic and is unfortunate in that it seems to suggest the sale date would be in 19 years or *later*, it seems clear to me that the commencement date for the start of the sales process in respect of the Allocated Property is 31 December 2036, as set out on the owners' certificate. Indeed, all documents seem to broadly agree with one another that the membership term is 19 years.

So, I can't see that this is a reason to find the credit relationship unfair and uphold this complaint.

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

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

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

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

## 5. Compliance with the regulatory rules.

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

But I don't think *Hopcraft, Johnson and Wrench* assists Mr W in arguing that his credit relationship with the Lender was unfair to him for reasons relating to commission given the facts and circumstances of this complaint.

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 W, 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 W 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 W.

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 Agreement that Mr W entered into wasn't high. At £743.13, it was only 2.49% of the amount borrowed and even less than that as a proportion of the charge for credit. So, had he known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr W wanted Fractional Club membership and had no obvious means of his own to pay for it. And at such a low level, the impact of commission on the cost of the credit he needed for a timeshare he wanted doesn't strike me as disproportionate. So, I think he would still have taken out the loan to fund his purchase at the Time 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 Agreement. And as it wasn't acting as an agent of Mr W but as the supplier of contractual rights he obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to him when arranging the Credit Agreement and thus a fiduciary duty.

Overall, therefore, 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 W.

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

### **Commission: The Alternative Grounds of Complaint**

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While I've found that Mr W's credit relationship with the Lender wasn't unfair to him for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Mr W's complaint about an unfair credit relationship. 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 a payment of commission from the Lender without telling Mr W (i.e., secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the Time 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 W 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 him. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time 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 he would still have taken out the loan to fund his purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

### **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 W to accept or reject my decision before 10 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 much the same set of conclusions as our Investigator, but my reasons differ in places, so I've decided to issue this provisional decision to allow the parties to the complaint a further opportunity to provide submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is **30 September 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

### The complaint

Mr W's complaint is, in essence, that Tandem Personal Loans Limited (the "Lender") acted unfairly and unreasonably by (1) being party to an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the "CCA") and (2) deciding against paying a claim under Section 75 of the CCA.

Mr W is represented in his complaint by a professional representative ("PR").

### What happened

This complaint relates to a timeshare purchase made by Mr W from a timeshare provider (the "Supplier") on 11 June 2018. I've outlined the background below:

- The purchase made on 11 June 2018 was of a membership in the Supplier's "Fractional Club". Mr W bought 2,730 points in the Fractional Club, which could be used in exchange for holiday accommodation annually. This type of timeshare was also asset-backed, which meant it included a share in the future sale proceeds of a specific timeshare apartment named on Mr W's purchase paperwork. The total price of the membership was £30,289. Mr W already had a "Trial" membership with the Supplier which was traded in for £4,395, leaving £25,894 to pay.
- The Supplier arranged a loan (the "Credit Agreement") with a different lender, "H", for £29,725. This covered both the net purchase price and existing borrowing relating to the Trial membership. The loan was repayable over 120 months at £414.46 per month. H later assigned the loan to the Lender.
- In January 2023, through PR, Mr W 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 W sought to hold the Lender liable under Section 75 of the CCA, and matters which were alleged to have rendered the credit relationship between him and the Lender unfair under Section 140A of the CCA.

The Lender rejected the complaint, which was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

## **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 W seeks 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 W has 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. This includes the cash price of the purchase being more than £100 but no more than £30,000. It's apparent in Mr W's case that the price of his timeshare was more than £30,000, so Section 75 does not apply to his purchase. It follows that the Lender did not treat him unfairly or unreasonably by not honouring his claim. That said, the chief ground on which Mr W sought to bring a Section 75 claim – that the Supplier had misrepresented certain things to him – is also something which could have rendered the credit relationship between him and the Lender unfair to him, and so I have looked into these allegations further below.

Section 140A of the CCA operates in a more complex manner than Section 75. Insofar as is relevant to Mr W's case, it means that the credit relationship between him 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 Findings

<b>Section 140A - Misrepresentations</b>	<b>Reason why this complaint doesn't succeed</b>
It was falsely represented that the product was an investment that would "considerably appreciate in value".	There's insufficient 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 indicate otherwise.
It was falsely represented that there would be a considerable return on investment because involved a share in a property that would increase in value.	As per the point above, there is insufficient 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 W also signed to say he understood the Supplier would not buy back the membership.
It was falsely represented that Mr W 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.
<b>Section 140A - Other Matters</b>	<b>Reason why this complaint doesn't succeed</b>
Mr W was pressured into making the purchase.	There is little evidence of what specifically the Supplier said or did which meant Mr W felt he had no choice but to purchase. Mr W also did not use the cooling-off period to cancel the purchase, which I would have expected had he only purchased because he was pressured into doing so.
The Lender failed to carry out the creditworthiness/affordability checks required by industry guidance or regulations.	Mr W has not provided evidence that the loan was actually unaffordable, which would be need to be shown if the complaint were to succeed on this point.
The Credit Agreement was arranged by an unauthorised credit broker, or by individuals working for an authorised credit broker who were not themselves authorised. This meant the loan was unenforceable.	The entity which arranged the Credit Agreement held the relevant regulatory permissions, so the agreement was not arranged by an unauthorised credit broker. Whether or not the individuals working on behalf of that entity were themselves authorised is not relevant.
The Supplier's terms and conditions contain unfair terms, which include its ability to repossess the membership and retain all sums paid in the event of small breaches by Mr W.	It's possible some of the Supplier's terms have the potential to operate in an unfair way, but I've not seen evidence that the terms have operated in that way in Mr W's case, or are likely to operate in that way in the future.

The Supplier marketed and sold the membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations.

While it's possible the Supplier marketed the product in this way, it would need to have played a material part in Mr W's decision to buy the Fractional Club membership, to render the credit relationship between him and the Lender unfair. I'm not convinced it did. **See further details below.**

The reason why I've been unable to conclude that any potential marketing by the Supplier of the Fractional Club product to Mr W as an investment is likely to have had a material impact on his decision to make his purchase, is due to a lack of *persuasive* evidence that this was the case.

When Mr W's complaint was first made by PR, it took the form of a letter of complaint which was more or less identical to other letters I have seen from PR, sent on behalf of other complainants. There was little to distinguish it from many other complaints, and it contained no direct testimony from Mr W. In other words, it was generic in nature, and not of much assistance in establishing what happened in June 2018.

We did not receive any direct testimony from Mr W until early 2024, nearly six years after the events in question, following an unfavourable assessment from our Investigator, and with the mid-2023 judgment in the case of *Shawbrook & BPF v. FOS* having given a public indication of what might make for a successful claim in cases involving alleged mis-selling of timeshares. This doesn't necessarily mean that the witness statement we've received does not represent what Mr W could remember, in 2024, of what the Supplier had said or what his state of mind was in 2018, but bearing in mind the judgment in *Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm)*, and what this has to say about the unreliability of human memory and especially how memories can be influenced by the process of preparing for litigation (or other dispute resolution procedures), I am inclined to treat Mr W's memories this far down the line with considerable caution in the circumstances. This has limited significantly the weight I can place on his witness statement.

So while I note Mr W says in his witness statement that he recalls the Supplier emphatically promoting the idea of making a profit from the sale of the Allocated Property at the end of the membership, and that this method of marketing was used to overcome his reservations about making the purchase, I think this is unfortunately too little, too late. It is not enough for me to be able to reach the conclusion that any marketing by the Supplier of the product as an investment (if indeed that happened) had a material impact on Mr W's purchasing decision, and it follows I'm unable to conclude the credit relationship between Mr W and the Lender was rendered unfair to him for this reason.

## **Conclusion**

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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 W'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 provisional decision**

For the reasons explained above, I am not minded to uphold this complaint.

Will Culley  
**Ombudsman**