DRN-5946685

Financial Ombudsman Service

The complaint

Mr S complains Clydesdale Financial Services Limited trading as Barclays Partner Finance (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 him under Section 140A of the CCA.

What happened

I issued a provisional decision on Mr S's complaint on 28 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 S entered an agreement to buy a fractional timeshare (the "Purchase Agreement") from a timeshare provider (the "Supplier") on 4 April 2017 (the "Time of Sale"), for £16,880, with a balance of £12,865 to pay after the trade-in of a previous product. This was financed by a loan of £16,644 from the Lender (the "Credit Agreement"), which included the refinancing of a loan from Mr S's previous purchase.[1]

- The timeshare was a type of asset-backed timeshare which entitled Mr S 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 S later complained, via a professional representative ("PR"), to the Lender about a number of concerns which included misrepresentations by the Supplier giving Mr S a claim against the Lender under Section 75 of the CCA, and matters giving rise to an unfair credit relationship between Mr S and the Lender.

- The Lender failed to respond to 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 S'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

[1] The appended provisional decision erroneously states that the loan amount was £12,865. The correct figure is £16,644, as stated in the final decision.

had made false statements of specific fact to Mr S.

- The Lender had not participated in a credit relationship with Mr S that was unfair to him because:
  - Regardless of whether the Lender had carried out appropriate checks before lending to Mr S, there was a lack of evidence the loan had been unaffordable for him at the time.
  - I wasn't convinced Mr S's ability to exercise a decision to make his purchase had been significantly impaired by any pressure from the Supplier. I noted Mr S had been given a cooling-off period to use to cancel the purchaser, which he had not taken advantage of.
  - The Credit Agreement had not been arranged by an unauthorised credit broker.
  - While I could see there were terms in the Purchase Agreement which could have operated in an unfair way, I hadn't seen evidence they had been operated in that way with respect to Mr S, or would likely be operated in that way in future.
  - It was possible the Supplier had breached Regulation 14(3) of the Timeshare Regulations by marketing the timeshare to Mr S as an investment, but I didn't think it was probable. Having considered Mr S's recollections from the Time of Sale, it didn't sound as though the Supplier had strayed from describing how the fractional aspects of the timeshare worked in neutral terms. I also noted that Mr S's recollections didn't contain any indication that he had bought the timeshare because he thought it was an investment, which was not surprising if the Supplier had marketed it in a way which was compliant with Regulation 14(3).

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. 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 S and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to Mr S 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 S, saying

this was done in order not to influence his recollections. PR said Mr S was also unaware about the judgment handed down in *Shawbrook and BPF v FOS*[2]. 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 correct, but I don't think it helps Mr S's case.

Finally, PR has said that Mr S is a layperson without investment experience, and his first language isn't English. In light of this, it has suggested it isn't surprising that he did not use technical investment terminology in his witness statement, and the *essence* of his statement conveys the important concept of acquiring a share in property that could be sold for a financial return.

I've thought about what PR has said carefully, but I think a more likely reason for Mr S not mentioning in his witness statement that the Supplier had marketed or sold the timeshare to him as an investment, is because the Supplier *didn't do so* during this particular sale. This seems more likely to me than the Supplier having done so, and Mr S having been unable to articulate the concept.

As I said in my provisional decision:

> *"In order to have sold or marketed the product to Mr S as an investment, the Supplier would need to have said or implied to Mr S that it was something that could lead to a financial gain or profit, and that this was a reason to purchase the product."*

But no suggestion of this comes across in Mr S's statement, where this is all he has to say about the fractional aspect of the timeshare:

> *"We were told that we will be purchasing a share of a property in Spain and we would become…members of exclusive holiday club, and although we were purchasing only small percentage of actual property but this would allow us to have a 1 week holiday in that property at chosen by us date. We were to be members of the [Supplier] for 15 years and during that time we would be an owner of that property. At the end of membership this property would be sold and we would receive a share of the value of that property in the same percentage as stated in our purchase contract."*

It seems unlikely to me, based on Mr S's recollections, that the Supplier went any further than describing how a fractional timeshare worked, and so it is still difficult to see any breach of Regulation 14(3). PR is, I think, inviting me to make a finding that because what was on offer was a percentage of property, then Mr S would likely have had an expectation of growth in value, and therefore have seen it as an investment. But that is not what Mr S says (nor does it necessarily mean the Supplier breached Regulation 14(3)), and I don't think I can make that finding given the evidence available in this case.

So, ultimately, for the above reasons, along with those I already explained in my provisional decision, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr S's purchasing decision.

<u>The alleged payment of a commission by the Lender to the Supplier</u>

[2] *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*').

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 S 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 S, 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 S 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 S.

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 S entered into wasn't high. At £416.10, it was only 2.5% of the amount borrowed. 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 S had no obvious means of his own to pay for the timeshare. And at such a low level, the impact of commission on the cost of the credit he needed 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 S 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 S.

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 S 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

While I've found that Mr S'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 S'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 S (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 S 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 S to accept or reject my decision before 16 February 2026.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've decided to issue this provisional decision to give the parties to the complaint a further opportunity to make submissions before I make my decision final.

The deadline for both parties to provide any further comments or evidence for me to consider is **11 November 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 S, 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 S complains Clydesdale Financial Services Limited trading as Barclays Partner Finance (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 him under Section 140A of the CCA.

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

What happened

This complaint relates to a timeshare purchase made by Mr S from a timeshare provider (the "Supplier") on 4 April 2017. It's apparent from more recent information supplied to the Financial Ombudsman Service that Mr S made a total of three or four purchases from the Supplier, of which this was the second. The complaint as submitted by PR related only to this purchase, so that is what my decision covers. I've outlined the basic details below:

- The purchase made on 4 April 2017 (the "Time of Sale") was of a membership in the Supplier's "Fractional Club". Mr S bought 910 points in the Fractional Club, which could be used to book holiday accommodation annually (the "Purchase Agreement"). 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 S's purchase paperwork (the "Allocated Property"). The purchase cost £16,880, reduced to £12,865 after the trade-in of a "Trial" membership Mr S had purchased the previous year.

- The Supplier arranged a loan (the "Credit Agreement") with the Lender for the £12,865 balance of the purchase price. This was repayable over 180 months at £192.24 per month.

- In July 2022, through PR, Mr S 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 S 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 S disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. PR also provided a witness statement to support Mr S's complaint. It was this witness statement which revealed that Mr S had in fact made other purchases from the Supplier.

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 S 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 S 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, 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 S'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 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 S would also have signed to say he understood the Supplier would not buy back the membership.[3]
It was falsely represented that Mr S 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 S was pressured into making the purchase.	There is little evidence of what specifically the Supplier said or did which meant Mr S felt he had no choice but to purchase. Mr S 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 S has not provided evidence that the loan was actually unaffordable, which would need to be shown if the complaint were to succeed on this point.
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 required permissions from the Financial Conduct Authority at the relevant time, so the agreement was not arranged by an unauthorised credit broker.
The Purchase Agreement contained terms which were unfair to Mr S, including terms allowing the Supplier to repossess the timeshare for minor breaches.	While there are terms within the Purchase Agreement which could be operated in an unfair way, no evidence has been provided that the terms have been operated in this way in practice, or likely will be in future, in Mr S's case.

[3] It was the Supplier's practice to require customers to sign a declaration which included a statement to this effect. The purchase paperwork submitted in this complaint is incomplete, however on the balance of probabilities I think such a declaration would have been signed by Mr S for this purchase.

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 S's decision to buy the Fractional Club membership, to render the credit relationship between him and the Lender unfair. **See further details below.**

I'll now set out the expanded reasons for my decision relating to the allegations that the Supplier marketed or sold the Fractional Club membership to Mr S as an investment in contravention of the prohibition on selling timeshares in that way.

Given what is known about the way in which the Supplier sold Fractional Club memberships, I think it's *possible* the sales representatives could have said or suggested to Mr S that Fractional Club membership was an investment which could lead to a financial gain or profit, and therefore have acted in contravention of the relevant prohibition in the Timeshare Regulations.

However, it's also necessary to show that any such breach by the Supplier had a material impact on Mr S's decision to go ahead with his purchase, to be able to arrive at a conclusion that the credit relationship between Mr S and the Lender was rendered unfair to him as a result. In this case, the evidence on both points is not persuasive or does not support the allegation made by PR on Mr S's behalf, for reasons I'll explain.

Up until relatively recently, the Financial Ombudsman Service had received no evidence from Mr S, in his own words, in relation to any aspect of his complaint. All we had to consider was the letter of complaint from PR, which was identical in nearly all respects to other letters of complaint I have seen from PR on behalf of other complainants. In other words, it was generic in nature.

It was only after the Investigator issued an unfavourable assessment of the merits of the complaint, 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 we received a witness statement from Mr S and his wife, Mrs S, who purchased the membership with him jointly. 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.

Nevertheless, I've read the witness statement carefully and I don't think Mr S in fact alleges that the Supplier marketed or sold the Fractional Club membership to him as an investment. He says only the following:

"We were told that we will be purchasing a share of a property in Spain and we would become…members of exclusive holiday club, and although we were purchasing only small percentage of actual property but this would allow us to have a 1 week holiday in that property at chosen by us date. We were to be members of the [Supplier] for 15 years and during that time we would be an owner of that property. At the end of membership this property would be sold and we would receive a share of the value of that property in the same percentage as stated in our purchase contract."

In order to have sold or marketed the product to Mr S as an investment, the Supplier would need to have said or implied to Mr S that it was something that could lead to a financial gain

or profit, and that this was a reason to purchase the product. Based on Mr S's description of how the Supplier sold the product to him, it sounds as though it simply explained how the fractional aspect of the product worked, and did not stray into discussion of potential financial gains or how much money he might receive at the end of the membership. So I think the Supplier probably did *not* breach Regulation 14(3) of the Timeshare Regulations in this particular sale.

In light of this, it is perhaps unsurprising that Mr S does not refer in his witness statement to having been motivated when making his purchase decision, by any prospect of the Fractional Club membership being an investment.

But even if Mr S had recalled the Supplier marketing or selling the membership to him as an investment, and even if he had recalled that this played an important part in his decision-making process, there wouldn't have been any other evidence on file to corroborate this, and it would have seemed to me to be a very real risk that any such recollections would have been coloured by the judgment in *Shawbrook & BPF v FOS*. And with that being the case, it's unlikely I would have been able to give Mr S's written recollections the weight necessary to conclude that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

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 S'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