

## The complaint

Mr C complains Mitsubishi HC Capital Plc (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 C is represented in his complaint by a professional representative (“PR”).

## What happened

I issued a provisional decision on this complaint on 3 November 2025 in which I set out the background to the case and my provisional findings. A copy of that provisional decision is appended to and forms part of this final decision, so it’s not necessary for me to go over all the details again. But to summarise briefly:

- Mr C purchased a timeshare on 12 September 2017 (“the Time of Sale”) from a timeshare provider (the “Supplier”). As well as providing holiday rights, this timeshare was asset backed, coming with a share in the net sale proceeds of a particular apartment named on the purchase paperwork (the “Allocated Property”) when Mr C’s membership came to an end. The purchase cost £23,889, with a balance of £19,984 to pay after Mr C traded in an existing “Trial” membership he’d bought from the Supplier recently.
- The Supplier arranged a loan (the “Credit Agreement”) with the Lender for £21,559, which consisted of the balance of the purchase price and the consolidation of outstanding debt relating to the Trial membership. This was repayable over 180 months at £249.01 per month.
- Mr C later complained to the Lender, via PR, about misrepresentations by the Supplier for which he sought to hold the Lender liable under Section 75 of the CCA, and various matters which he considered rendered the credit relationship with the Lender unfair to him within the meaning of Section 140A of the CCA.
- Chief among Mr C’s concerns giving rise to a complaint about an unfair credit relationship was his allegation that the Supplier had sold the timeshare to him as an investment, in breach of the laws on selling timeshares which applied at the Time of Sale.

In my provisional decision, I said that I didn’t think the complaint should be upheld. The full reasons can be found in the appended document, but again to summarise briefly:

- I considered there was a lack of persuasive evidence for some of the misrepresentations Mr C had alleged, while some of the other allegations were rather vague and lacking in colour or context, meaning it was difficult to arrive at any positive conclusion regarding misrepresentation.
- Of the various matters which Mr C had alleged rendered the credit relationship between him and the Lender unfair to him, there was either a lack of evidence to

support the facts alleged – for example that the Credit Agreement had been arranged by an unauthorised credit broker – or a lack of evidence to show that Mr C had lost out as a result.

- On the matter of the timeshare having been sold or marketed to Mr C as an investment, I thought it was possible the Supplier had done this, but I was unable to conclude it had rendered the credit relationship between Mr C and the Lender unfair to him, because I was not persuaded the prospect of the product being an investment had been a material factor in Mr C's purchasing decision. My reasons for this conclusion were:
  - There were some doubts over the provenance of a witness statement PR and Mr C sought to rely on to make the case on this point. It had been alleged that the statement had not been written when it was said to have been written, and in fact post-dated events which could have influenced Mr C's recollections.
  - If the statement had been written when it was said to have been written, then it didn't really make the case, in any event, for any investment motive being material to Mr C's purchasing decision at the Time of Sale. Rather, Mr C was very much focused on the holiday-related benefits of the product as having been important. While there was a reference to the product being sold as an investment, this was mentioned in passing and felt like an afterthought.
  - Additionally, I considered Mr C's pattern of purchases from the Supplier was not suggestive of him being motivated by the prospect of having a profitable investment. Indeed, he had later swapped to a product from the Supplier which had no investment features. It seemed odd that he would have done so, had he been particularly interested in the prospect of his existing membership(s) being investments.

I asked the parties to the complaint to provide any further submissions they wanted me to consider. The Lender didn't respond. PR, on behalf of Mr C, said it disagreed with the provisional decision and asked me to consider a number of points focused on Mr C's allegation that the Supplier had sold the timeshare to him as an investment. PR also raised the possibility that the Lender had paid the Supplier an improperly disclosed commission for arranging the Credit Agreement, thus introducing another potential reason for the credit relationship to have been unfair to Mr C.

He 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 response from PR, 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 further comments in response to the provisional decision only relate to the issue of whether the credit relationship between Mr C and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to Mr C 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 they didn’t make any further comments in relation to those in their response to my provisional decision. 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 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

Part of my assessment of Mr C'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*.<sup>1</sup>

PR says, in essence, that Mr C's recollections can't have been influenced by later events such as our Investigator's assessment or *Shawbrook and BPF v FOS*, because he was unaware of or hadn't seen either of these things. PR said it was unable to comment on the concerns about the provenance of Mr C's witness statement, as it didn't have the necessary expertise, but suggested there was an innocent explanation for certain file metadata which dated to later than might have been expected had the statement been written in 2022.

As I indicated in my provisional decision, it may be the case that Mr C's witness statement was written before the events which could have influenced his recollections, or it may not be. But either way, there were various reasons why I didn't think his witness statement made a compelling case for him having had, as a material part of his purchasing decision, the prospect of the Fractional Club membership being an investment.

I don't think PR has addressed my reasoning for not being persuaded by the content of Mr C's witness statement. PR has suggested that because Mr C mentioned that the Supplier marketed the product as an investment, this must have been a material factor in his purchasing decision, but I don't think that necessarily follows. My evaluation of Mr C's testimony was that very little prominence was given to the matter of investment, and far more to other reasons for his purchase. I also took into account his later actions, finding these were not necessarily consistent with those of someone who had been motivated to make the purchase in question, by the prospect of it being an investment.

Similarly, PR has referred to a specific percentage being written by the Supplier on part of the purchase paperwork, as being evidence that Mr C was convinced to purchase by the prospect of that percentage share in the Allocated Property resulting in him making a profit. But again, I don't think that's very persuasive. The percentage appears simply to be a factual representation of the share Mr C would have in the net sale proceeds – and was situated alongside various other numbers relating to the sale. I don't think it helps to establish what Mr C's motivations were at the Time of Sale.

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 C's purchasing decision.

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

I will also address another point made by PR in response to my provisional decision, regarding an 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 C in the future, as any delay could mean a delay in the realisation of his share in the Allocated Property.

In this case there appears to be a mistake on Mr C's Ownership Certificate, in that the "sale date" is incomplete, showing a date of 31 December, but not a year. Within the purchase paperwork, set out under point 1 of the Members Declaration, which has been initialled and signed as being read by Mr C, a date of 31 December 2035 is given. This date indicates that the membership has a term of 17 or 18 years. The ambiguity identified by PR is that in the

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<sup>1</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)

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).

It seems clear to me that the commencement date for the start of the sales process is 31 December 2035.

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

#### The provision of information by the Supplier at the Time of Sale

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 C 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 C, 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 C 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 think any such failure is itself a reason to find the credit relationship in question unfair to Mr C.

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 C entered into wasn't high. At £862.36, it was only 4% of the amount borrowed and 3.7% 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 C 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 the 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 C 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 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 C.

### **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 C 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.

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

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While I've found that Mr C'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 C'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 C (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 C 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 the 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 Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 January 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 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 **17 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 C, 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 C complains Mitsubishi HC Capital Plc (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 C is represented in his complaint by a professional representative ("PR").

### **What happened**

This complaint relates to a timeshare purchase made by Mr C from a timeshare provider (the "Supplier") on 12 September 2017. This was the second of four timeshare purchases I'm aware of that Mr C made from the Supplier. I've outlined the basic details below:

- The purchase made on 12 September 2017 (the "Time of Sale") was of a membership in the Supplier's "Fractional Club". Mr C bought 1,360 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 C's purchase paperwork (the "Allocated Property"). The purchase cost £23,889, with a balance of £19,984 to pay after Mr C traded in an existing "Trial" membership he'd bought from the Supplier recently.
- The Supplier arranged a loan (the "Credit Agreement") with the Lender for £21,559, which consisted of the balance of the purchase price and the consolidation of outstanding debt relating to the Trial membership. This was repayable over 180 months at £249.01 per month.
- In October 2022, through PR, Mr C 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 C 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 C disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. At this stage PR supplied a witness statement, said to have been written by Mr C in August 2022, to support his case.

### **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 C 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 C 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 C'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
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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 C also signed to say he understood the Supplier would not buy back the membership.
It was falsely represented that Mr C 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>Matters allegedly rendering the credit relationship unfair</b>	<b>Reason why this complaint doesn't succeed</b>
Mr C was pressured into making the purchase.	There is little evidence of what specifically the Supplier said or did which meant Mr C felt he had no choice but to purchase. Mr C 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 C 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 self-employed individuals who didn't hold the relevant permissions for credit broking, meaning it was unenforceable.	It appears the entity which arranged the Credit Agreement held the right permissions from the Financial Conduct Authority at the relevant time, so the agreement was not arranged by an unauthorised credit broker. The employment status of the individuals concerned isn't relevant.
The Purchase Agreement contained terms which were unfair to Mr C, 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 C's case.
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 C's decision to buy the Fractional Club membership, to render the credit relationship between him and the Lender unfair. <b>See further details below.</b>

I'll now set out the expanded reasons for my decision relating to the alleged marketing and/or selling of the Fractional Club membership to Mr C as an investment.

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

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 C 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 necessary to show that any such breach by the Supplier had a material impact on Mr C's decision to go ahead with his purchase, to be able to arrive at a conclusion that the credit relationship between him and the Lender was rendered unfair to him as a result. In this case, the evidence is not persuasive, for reasons I'll explain.

Up until relatively recently, the Financial Ombudsman Service had received no evidence from Mr C, 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 and I have found it of no assistance in determining what is likely to have happened at the Time of Sale, or Mr C's state of mind.

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 C.

It's unknown definitively when this statement was first written or whether it has changed over time. PR says it was written in August 2022, and Mr C says he recognises it as a statement he made around then. On the other hand, the Supplier, via the Lender, argues that the statement is of dubious provenance, with certain metadata associated with it indicating that it was created or edited shortly before it was sent to the Financial Ombudsman Service.

If it's the case that the witness statement represents Mr C's recollections after *Shawbrook & BPF v FOS*, then I do not think I can attach much, if any, weight to those recollections. And that is because 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. Given the timing, to me there seems to me to be a very real risk that Mr C's recollections would have been coloured by the judgment in *Shawbrook & BPF v FOS*.

If it's the case that the witness statement represents Mr C's genuine recollections around August 2022, some time before the judgment in *Shawbrook & BPF v FOS*, then I have to say that, in my view, his statement does not make a good case for the Supplier having marketed the Fractional Club membership to him as an investment, or of there being any investment motivation in his decision to go ahead with the Purchase Agreement. I'll explain why.

Mr C's statement recounts his experiences with the Supplier across the four purchases that he made. When recounting this particular purchase, he goes into a fair amount of detail but does not mention the Supplier ever having marketed or sold the product as an investment. Mr C's statement is focused instead on the holiday benefits being promoted by the Supplier,

and on the pressure he felt on the day. He says that his wife was taken in by promises of 5 star luxury at a low price, and he had just wanted to leave the sales pitch, so he'd signed.

Later in his statement, Mr C sets out a numbered list of his concerns about his purchases from the Supplier. None of the points on the list relate to the products being an investment or of the Supplier having marketed or sold them in that way.

There is a paragraph towards the end of the statement where Mr C *does* refer to the Supplier having told him on each occasion he made a purchase, that he was buying an investment that would result in the sale of a property at the end of his contract and which would lead to a financial gain. But he doesn't say or suggest this was influential in his decision making process and, taking the statement as a whole, this one small paragraph lacks prominence and feels like something of an afterthought.

Finally, I note that other facts relating to Mr C's series of purchases from the Supplier do not support a contention that he made his purchase at the Time of Sale because he was motivated by the prospect of it being an investment. When upgrading from the purchase he made on this occasion, he traded in his membership for significantly less than he'd paid for it. I've not seen evidence this was something Mr C questioned at the time – which might have been expected if a hoped-for investment had lost significant value in a short space of time.<sup>2</sup> Additionally, Mr C's final purchase from the Supplier involved trading in a Fractional Club membership which had an investment element (the share in the net proceeds of a specific property), for a holiday club membership with no investment element. Had Mr C been going into his purchases from the Supplier with investment in mind, it would make little sense for him to swap a product containing investment features for one without such features.

In light of the above, I don't think there is persuasive evidence either that the Supplier marketed or sold the Fractional Club membership to Mr C as an investment, or that Mr C's decision to purchase the Fractional Club membership was motivated by the prospect of the product making him a financial gain. It follows that I am unable to conclude that the credit relationship between him and 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 C'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'm not minded to uphold this complaint.

Will Culley  
**Ombudsman**

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<sup>2</sup> On the other hand, I also appreciate that because the product was to run for a long time (typically around 19 years), someone who saw it as an investment might take a long-term view of its value and not necessarily be concerned about a short-term drop in how much it was worth.