DRN-5998133

The complaint

Mr S complains Mitsubishi HC Capital UK 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 S is represented in his complaint by a professional representative ("PR").

What happened

I issued a provisional decision on this complaint on 7 November 2025, in which I set out the background to, and my provisional findings on, the case. 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 S bought a timeshare from the timeshare provider (the "Supplier") on 8 April 2019 (the "Time of Sale"). The timeshare was a membership in a variant of the Supplier's "Fractional Club" which the Supplier called the "Signature Collection". I will simply refer to it as the "Signature" variant. Mr S bought 1,420 points in the Signature variant (the "Purchase Agreement"). A unique feature of the Signature variant was that it gave Mr S the right to stay in a specific luxury apartment (the "Allocated Property") every year in late June. Alternatively, he could pay a small fee to convert this right into 1,420 points, which could be exchanged for accommodation elsewhere in the Supplier's portfolio.

  This type of timeshare was also asset-backed, meaning it included a share in the future sale proceeds of the Allocated Property. The purchase cost £26,258. Mr S traded in his existing membership of the Fractional Club, which he'd bought from the Supplier around 18 months previously, for £11,830. This left a balance to pay of £14,428.

- The Supplier arranged a loan (the "Credit Agreement") with the Lender for £18,812. This consisted of the balance of the purchase price and the consolidation of £4,384 of debt left over from Mr S's previous purchase. This was repayable over 180 months at £217.28 per month.

- Mr S 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.

- Foremost amount Mr S's concerns giving rise to his complaint about an unfair credit relationship, was an 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 S 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.

- When considering the fairness of the credit relationship between Mr S and the Lender, I also needed to consider things relevant to any "related agreement". This included the Purchase Agreement, but also Mr S's previous purchase from the Supplier, which he had traded in as part of the Purchase Agreement. This was because the previous purchase had been financed by the same Lender and the Credit Agreement had refinanced Mr S's indebtedness to the Lender.

- That said, of the various matters Mr S 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 Mr S had lost out as a result.

- On the matter of the timeshare (or the timeshare purchased previously) having been sold or marketed to Mr S 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 S and the Lender unfair to him, because I was not persuaded the prospect of either product being an investment had been a material factor in Mr S's purchasing decisions. My reasons for reaching these conclusions were:

    - There were some doubts over the provenance of a witness statement PR and Mr S sought to rely on to make their case on this point. It had been alleged that the statement had not been written when it was said to have been written, and post-dated certain events which could have influenced Mr S's recollections. I noted there was no audit trail to show when the statement had been written or amended or added to. On balance I was not convinced I could attach much weight to it, or to a later email from January 2024 which clearly post-dated events which could have influenced Mr S's recollections.

    - Even if I could attach much weight to Mr S's witness statement, I considered it didn't make the case persuasively for Mr S having made either of his purchases because he was materially motivated by the prospect of the timeshares being an investment (in the sense of something which could make him a profit):

        - Mr S said nothing of the Signature variant which was the subject of the Purchase Agreement having been sold to him as an investment or of this being important to his decision making process. Rather, Mr S explained that the Supplier had told him his existing membership didn't give him enough points for the holidays he wanted, and the Signature upgrade was presented as a solution to this. So it was difficult to conclude Mr S must have been motivated by the prospect of his purchase being an investment (or even that the Supplier had sold the product to him as such).

        - Of the previous purchase, Mr S had indeed recalled the Supplier marketing and selling the product to him as an investment, and that he'd been convinced he'd make a profit. However, as well as having concerns about the timing of Mr S's testimony, I also thought his later actions suggested making a financial gain was not important to him.

When he had traded in his previous purchase for the Signature variant, he had made a loss of around 34%. If he had been convinced he would make a profit and this had been an important part of his rationale for proceeding, then it seemed odd that, having made such a large loss, he didn't raise any concerns.

I asked the parties to the complaint to let me have any further submissions they wanted me to consider. The Lender didn't respond to the provisional decision. PR, on behalf of Mr S, said it disagreed with the provisional decision. It focused its response on the matter of whether or not the timeshares had been sold to Mr S as an investment and whether this had been a material factor in his purchasing decisions, but also raised the possibility that an improperly disclosed payment of commission by the Lender to the Supplier for arranging the Credit Agreement, was also something which could have rendered the credit relationship unfair to Mr S

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:

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

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

<u>The FCA's Principles</u>

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 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 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 S'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*.[1]

PR says, in essence, that Mr S'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 more technical aspects of the concerns surrounding the provenance of the witness statement, but suggested there was an innocent explanation for certain file metadata which suggested the document dated to later than would have been expected, had it been written when PR and Mr S said it was. PR also said that it had a copy of a screenshot showing when Mr S's witness statement was uploaded to a digital filing system, but I note it hasn't provided the screenshot in question, nor confirmed the date the screenshot shows the file was uploaded.

I have thought about what PR has said, but on balance, I don't find it changes my opinion regarding the credibility of Mr S's testimony and the amount of weight I can place on it. While the witness statement was not received after our Investigator's assessment, it was received after the judgment in *Shawbrook and BPF v. FOS*, and I think too many questions remain over the credibility of that testimony given its timing, and the allegations that have been made about it.So, I maintain that there is a risk that Mr S's testimony was coloured by the

[1] *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin)

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 can place little weight on it.

But even if I could place enough weight on that evidence, I don't think it would be persuasive for the reasons I set out in the appended provisional decision. I've considered PR's comments on this, but I don't think they add anything new, nor do I think they adequately address the reasons I gave for not finding the content of the witness statement persuasive (regardless of its provenance).

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.

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

PR also raised a point 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 S 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 incomplete, stating only a date and a month, with no year. However, the date is set out under point 1 of the Members Declaration, which has been initialled and signed as being read by Mr S. This date, 31 December 2035, indicates that the membership has a term of 15 years. 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).

It seems clear to me that the commencement date for the start of the sales process is 31 December 2035. This actual date is outlined in the sales documentation as I've set out above.

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 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 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 £752.48, 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 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 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 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 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.

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 S 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

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 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 S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 January 2026.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

I've decided to issue a provisional decision to give the parties to the complaint an opportunity to provide further submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is **21 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 Mitsubishi HC Capital UK 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 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 8 April 2019. This was the last of three purchases from the Supplier. I've outlined the basic details below:

- The purchase made on 8 April 2019 (the "Time of Sale") was of a membership in a variant of the Supplier's "Fractional Club" which the Supplier called the "Signature Collection". I will simply refer to it as the "Signature" variant. Mr S bought 1,420 points in the Signature variant (the "Purchase Agreement"). A unique feature of the Signature variant was that it gave Mr S the right to stay in a specific luxury apartment (the "Allocated Property") every year in late June. Alternatively, he could pay a small fee to convert this right into 1,420 points, which could be exchanged for accommodation elsewhere in the Supplier's portfolio.

  This type of timeshare was also asset-backed, meaning it included a share in the future sale proceeds of the Allocated Property. The purchase cost £26,258. Mr S traded in his existing membership of the Fractional Club, which he'd bought from the Supplier around 18 months previously, for £11,830. This left a balance to pay of £14,428.

- The Supplier arranged a loan (the "Credit Agreement") with the Lender for £18,812. This consisted of the balance of the purchase price and the consolidation of £4,384 of debt left over from Mr S's previous purchase. This was repayable over 180 months at £217.28 per month.

- In November 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.

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.

<u>Special circumstances regarding related agreements in Mr S's case</u>

The complaint made by PR to the Lender on Mr S's behalf only referred to the purchase of the Signature variant of the Fractional Club membership in April 2019. A witness statement, ostensibly dating to October 2021 and submitted by PR in August 2023 on behalf of Mr S, makes it clear that he was also unhappy about his previous purchase of Fractional Club membership, which took place in October 2017 and for which he paid £17,959 (before trade in of another previous membership). That earlier purchase was also financed by the Lender, so it's unclear why PR didn't include it in the complaint it made. However, I will need to consider this earlier purchase in any event, for reasons I'll now explain.

It's important to point out in Mr S's case that a "related agreement" would include any previous credit agreement with the Lender which was refinanced by the Credit Agreement, *and* any timeshare purchase financed by that prior credit agreement. So I need to consider the fairness of the credit relationship between Mr S and the Lender under the *prior* credit agreement, as any unfairness could be carried over into the later Credit Agreement. In essence, that means I need to consider whether Mr S's previous purchase was mis-sold, as well as the purchase PR has brought this complaint about on Mr S's behalf.

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. Below the table I will also deal with the earlier purchase, as part of the analysis of the evidence relating to the allegation that the Supplier marketed and sold both timeshares to Mr S as an investment.

Table of Summarised Findings (Signature Variant)

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 Signature variant 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 also signed to say he understood the Supplier would not buy back the membership.
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. Mr S was entitled to stay in the Allocated Property in week 26 of each year, and the Supplier's notes indicate this was clarified to him as he had questions about it at the Time of Sale.
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 individuals who were not authorised for credit broking, meaning it was unenforceable.	It appears the entity which arranged the Credit Agreement held the right permissions at the relevant time, so the agreement was not arranged by an unauthorised credit broker. The employment status of that entity's representatives is not relevant.
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.
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.**

As noted above, the legal and regulatory context to complaints such as Mr S's is now widely shared through the publication of hundreds of decisions by the Financial Ombudsman Service. So I'll say only that in order for the credit relationship between Mr S and the Lender to be rendered unfair to him for reasons relating to the final allegation in the table above, the following two things would need to be true:

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

2. This improper selling or marketing of the products had a material impact on Mr S's decision to go ahead with his purchases.

At this stage I think it's important to comment on the evidence we have to support the allegations made by PR on Mr S's behalf, that the Supplier breached Regulation 14(3) of the Timeshare Regulations when selling the memberships to him.

In May 2023, 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. This judgment related to the alleged mis-selling of fractional timeshares, and it highlighted the kinds of factual scenarios that would be most likely to lead to complaints about the mis-selling of fractional timeshares being

successful. This included where a timeshare supplier had sold and/or marketed such a product as an investment.

The only evidence we have of how the Supplier sold the timeshares in Mr S's case, is a witness statement which PR says Mr S made in October 2021. However, we were not sent a copy of this witness statement until late in August 2023. 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. Indeed, there seems to me to be a very real risk that recollections which date to *after Shawbrook & BPF v FOS* would be coloured by the judgment handed down by the court in that case.

In an email to PR in January 2024, Mr S said that the witness statement *"was done before the 2nd October 2021".* This is the only evidence we have that the statement was written at that time. The statement is not dated or signed, or accompanied by an audit trail.

The provenance and credibility of the witness statement is also disputed by the Supplier, which has commented on it via the Lender. The Supplier says, among other things, that:

- The witness statement contains standard paragraphs that appear in other witness statements it has seen from PR.
- The document metadata associated with the witness statement indicates it was created early in August 2023, not in October 2021. Further, it was modified later in August 2023, shortly before being sent to the Financial Ombudsman Service.
- The witness statement contains various factual errors, such as stating the sales process for the Signature variant took all day when it was only three hours, and that the sale took place far away from Mr S's accommodation, making it difficult for him to leave, when in fact it was only 5 minutes away. Mr S also got the name of one of the products wrong.

Having studied the witness statement carefully, and having seen many dozens of witness statements in cases involving timeshares, I think there are signs that it is at least partially based on a template, but I also think that some of the content will have come from Mr S directly. The factual errors the Supplier has pointed to, do not appear to me to be particularly serious (if indeed they are factual errors), and not a reason to say the statement as a whole lacks credibility.

Regarding the metadata concerns raised by the Supplier, what it says about the creation and modification dates is accurate. There could be multiple reasons why these dates are around two years after the statement was said to have been made, although it does invite the question of whether the statement has been amended or added to after it was originally written. As I've already said, there is no audit trail or evidence of when it was written, other than Mr S's assertion in January 2024 that it was *"done before the 2nd October 2021".*

Having considered all the evidence available in this case, I am not convinced that Mr S's witness statement is a set of recollections I can place sufficient weight on to be able to draw a positive conclusion that the Supplier sold the Signature variant or the earlier membership to him as an investment, and that this was something which had a material impact on his purchasing decisions. I think there are simply too many questions over the provenance of the statement for me to be able to rely on it as representing Mr S's recollections as of October 2021. And that being the case, I think there's a risk that these recollections may have been coloured by the judgment in *Shawbrook & BPF v FOS*.

But even if that were not the case, and I considered I *could* place sufficient weight on the recollections, I am unconvinced that they make the case for the Supplier having sold the

Signature variant as an investment at the Time of Sale. I say that because Mr S doesn't say in the statement that this happened. Of the meeting with the Supplier at which he bought the Signature variant, he says only:

"*During this meeting the sales rep persuaded us that the initial purchase was not fit for purpose as it did not give us enough points to use effectively. She told us there was a new level of accommodation available called Signature Collection which would work so much better for us. The sales rep offered us a new deal which was to buy back the original ownership and replace it with a new one at this level for a minimal additional monthly fee."*

"Once we had been pressurised into agreeing to this deal, we were told that we had to accept it there and then or the deal would be gone."

It was only in a later email, in January 2024, that Mr S recalled the Supplier selling the Signature variant to him as an investment. Given the timing of this email, dating to many months after the case of *Shawbrook & BPF v FOS*, I'm unable to give enough weight to it for the reasons I've already explained relating to recollections made after the judgment was handed down.

But what of the previous purchase? As I've said above, this was a related agreement, so if the Supplier had improperly marketed or sold this to Mr S as an investment, then this could have caused unfairness which was carried through into the Credit Agreement when Mr S upgraded to the Signature variant. If I *could* place weight on the witness statement, would this make a difference to the outcome of this complaint? In the statement, Mr S does recall the Supplier selling the product as an investment, stating:

"We were told if we upgraded to full Fractional Property Owners Club Membership then we would no longer have to pay a booking fee when we took our holidays but instead would pay a ***small*** *annual management charge based on the number of points that we owned. We were told that we would own a fraction of a physical property and that after a period of 19 years, that property would be sold and we would receive our money back and a share of the profits. They described the upgrade as the difference between renting and buying your house. During that membership we would continue to receive annual points which could be used on any [Supplier] resort but that we could also exchange points using [Name of Exchange Company].*

We were persuaded that with FPOC we were investing in a physical asset and we would get our money back with profits at the end of the 19 years fixed term. We would also be able to exit the club at that time."

However, later events and Mr S's reaction to them, appear to be inconsistent with a belief that the product had been an investment or of this having been something which was important to him.

The price of the previous membership Mr S had bought from the Supplier, and which he recalled was sold to him as an investment, was £17,959. Around 18 months later, he traded this in to the Supplier as part of the deal for the Signature variant, at which time it was valued at £11,830. So in that period of time it would seem the timeshare had lost £6,129 (34%) of its value. I appreciate of course that the share of the fractional asset was a long-term investment of up to 19 years, and so a person who considered the investment aspect of the product to be important to them may not have been too concerned about a short-term drop in value. That said, the loss of over a third of the investment's value in 18 months is significant enough that I would have expected it to prompt concern, but there is no evidence either in Mr S's recollections or in the Supplier's notes made at the time of the trade-in, to suggest that he expressed any concern. So I think even if I could attach more weight to

Mr S's recollections, it would be difficult for me to conclude that any investment motive formed a material part of his purchasing decisions.

It follows that I don't think the credit relationship between Mr S and the Lender was rendered unfair to him by the Supplier having breached Regulation 14(3) at the Time of Sale or when it sold the previous membership, which was a related agreement for the purposes of Section 140A of the CCA.

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'm not minded to uphold this complaint.

Will Culley
Ombudsman