

## The complaint

This is a complaint brought on behalf of the estate of the late Mr M. The complaint is that Allium Money Limited (the “Lender”) has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the “CCA”) and participated in an unfair credit relationship with Mr M under Section 140A of the CCA.

Mr M’s estate is represented by his daughter, Ms M, and a professional representative (“PR”).

## What happened

I issued a provisional decision on the late Mr M’s complaint on 2 December 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 M entered an agreement to buy a timeshare (the “Purchase Agreement”) from a timeshare provider (the “Supplier”) on 25 September 2019 (the “Time of Sale”), for £16,709. There was a balance to pay of £8,909 after the trade-in of a timeshare he had bought from the Supplier in 2018. The balance was financed by a loan of £20,771 from the Lender<sup>1</sup> (the “Credit Agreement”). The loan included the consolidation of some existing debt relating to the 2018 purchase. Ms M was present at the Time of Sale but not a party to the Purchase Agreement or Credit Agreement.
- The timeshare was a type of asset-backed timeshare which entitled Mr M 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 M died in January 2022, and the Lender sent his estate a bill for £19,228.96. This prompted a complaint by Ms M, on behalf of the estate. Ms M complained about a number of concerns which included misrepresentations and breaches of contract by the Supplier, poor service and inappropriate pressure to purchase from the Supplier, and a failure by the Lender to carry out proper affordability checks.
- The complaint was referred to the Financial Ombudsman Service for an independent assessment. One of our Investigators looked into the matter and assessed that it ought not to be upheld. Ms M disagreed and said she wanted PR to represent her late father’s estate in the complaint from now on.
- PR introduced a new point of complaint at this stage – that the Supplier had improperly sold Mr M the timeshare as an investment, in breach of the law on selling timeshares. This, PR argued, had led to the credit relationship between Mr M and the

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<sup>1</sup> The Credit Agreement was initially entered into between Mr M and another lender, “H”. However, the loan has passed by assignment to the Lender, which has informed us that it is responsible for the complaint.

Lender being rendered unfair to him.

The complaint was passed to me and, after some further investigation, I issued a provisional decision in which I said I didn't think the complaint should be upheld. Again, the details can be found in the appended document, but to summarise:

- Regarding the Supplier's alleged misrepresentations, Ms M had said the Supplier had told her father that he'd be able to holiday every year with the timeshare he bought in September 2019. I thought there was insufficient persuasive evidence of what exactly the Supplier had said in relation to this, or even whether it was false that Mr M could not have used the product to holiday every year. While the timeshare was "bi-annual", meaning Mr M would be credited with "points" to spend on accommodation every other year, my understanding was that leftover points could be used every year.
- Ms M had said that the Supplier no longer existed and so the timeshare rights her late father had purchased, could no longer be used. I interpreted this as a claim that the Supplier had breached the Purchase Agreement, but I noted that despite the insolvency of some companies within the Supplier's group, it appeared that timeshare rights could be used as normal and so it wasn't possible to conclude a breach of contract had occurred.
- Regarding a number of matters raised by Ms M and by PR which I interpreted as concerns which could lead to the credit relationship between Mr M and the Lender having been rendered unfair to him:
  - While Ms M had given a relatively detailed account of what had happened at the time her father bought the first timeshare in 2018, and the pressure she considered he had been put under, there was a lack of detail and colour regarding the Time of Sale in 2019. It was not even clear to me that Ms M was alleging that the Supplier *had* applied inappropriate pressure at the Time of Sale. She appeared more concerned about the 2018 purchase, which this complaint was not about. It followed that I considered there was insufficient persuasive evidence for me to be able to draw a positive conclusion regarding alleged application of pressure by the Supplier at the Time of Sale.
  - I thought the Lender had **not** carried out the checks it should have done before lending to Mr M. It had failed to meet the standards required of it by the regulations of the time, in particular by assuming Mr M was going to meet his repayments over the long-term by using his savings, when he had not indicated that this was what he was going to do. That said, I observed that for the Lender's failing to lead to an unfair credit relationship, it would need to be shown that the Credit Agreement would not have been sustainably affordable for Mr M. My analysis of his financial situation at the relevant time was that it would have been sustainably affordable due to an increase in Mr M's income over the course of the agreement.
  - I thought it was possible the Supplier had sold or marketed the timeshare to Mr M as an investment, in breach of the Timeshare Regulations, given what was known about how the Supplier had sold Fractional Timeshares. But I didn't recognise this allegation in any of Ms M's previous submissions. It was not something that had been mentioned until after PR had become involved in the case, and after both a prominent court case involving fractional timeshares, and our Investigator's own unfavourable assessment of the complaint. In light of this, I didn't feel I could attach sufficient weight to later

testimony from Ms M that the timeshare had been marketed and sold as an investment to her late father. I further noted that, as with Ms M's allegations of inappropriate pressure from the Supplier, her testimony regarding how the Supplier had marketed the timeshare seemed to relate to the 2018 sale, and not the 2019 sale the complaint was about.

I noted in closing that the Lender had now agreed to write off the remaining balance of the loan, which came to about £19,500, meaning Mr M's estate would no longer be pursued for it.

I invited the parties to the complaint to respond to my provisional decision. The Lender said it accepted the provisional decision. PR, on behalf of Mr M's estate, said it disagreed. It focused its response on the matter of the Supplier having allegedly sold the timeshare to Mr M as an investment at the Time of Sale. PR also advanced a new argument: that the Lender had paid the Supplier an improperly disclosed commission for arranging the Credit Agreement, this being another ground on which the credit relationship had been rendered unfair to Mr M.

The case has 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 M and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to Mr M 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, Ms M and PR originally raised various other points of complaint, all of which I addressed at that time. But no further comments have been made in relation to those in its response to my provisional decision. Indeed, neither Ms M nor PR have 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

PR said Ms M's witness statement could not have been affected by our Investigator's assessment. PR said she was also unaware about the judgment handed down in *Shawbrook and BPF v FOS*<sup>2</sup>. PR said this means her recollections have not been influenced by either the Investigator's assessment or the judgment.

PR also argued that studies had shown high pressure sales would tend to lead to someone having vivid recollections of what happened during that process, for a variety of reasons. That may or may not be the case, but I don't think it assists PR in addressing the concerns I expressed in my provisional decision.

Part of my assessment of Ms M'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*, our Investigator's assessment and any discussions with third parties such as PR.

I have thought about what PR has said, but on balance, I don't find it a credible explanation of the contents of Ms M's post-assessment witness statement. PR has not addressed the difficulties which are caused by Ms M having never mentioned the timeshare having been sold as an investment in her original complaint or her recollections of the sale, and only

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<sup>2</sup> *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('*Shawbrook & BPF v FOS*').

appearing to remember this after PR had begun representing her father's estate, after the judgment in *Shawbrook & BPF v FOS*, and after our Investigator's assessment. Two possibilities present themselves:

The first possibility is that Ms M didn't recall the Supplier had marketed the product in this way until much later in the complaint process. If this is the correct analysis, then it doesn't support a conclusion that any marketing of the timeshare as an investment was a material factor in her father's decision to purchase on the day. If an investment motivation had been important, I'd expect it to have been mentioned the first time Ms M had recalled what happened at the Time of Sale.

The alternative possibility is that the witness statement submitted after PR's involvement, and other external events such as the court case mentioned above, was shaped by discussion with others (such as PR) and knowledge of these external events, which could have influenced Ms M's later recollections.

Either way, I maintain that there is a risk that Ms M's testimony, vivid or not, was coloured by the 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.

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 Mrs P's purchasing decision.

#### The payment by the Lender of a commission to the Supplier

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 PR and the Lender 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 in arguing that Mr M's 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 M, 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 M 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 M.

In 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 M entered into wasn't high. At £519.28, 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 persuaded that he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. At such a low level, the impact of commission on the cost of the credit he needed for the timeshare 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. I'm aware that, due to Mr M having had a significant amount of money in his account at the Time of Sale, it could be argued that he didn't need the loan and therefore would have chosen not to take it had he known about the

commission. But given the low level of commission, and the fact that Mr M was contemplating taking a loan at all when – ostensibly – he could simply have used cash to pay for his timeshare, I'm not convinced further disclosure would have made a difference to his decision.

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 M 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 M.

### **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 M and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. So I don't think it would be fair or reasonable that I uphold this complaint on that basis.

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

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While I've found that Mr M'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 the complaint brought on behalf of his estate 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 M (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 M 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 his estate. 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 the appended provisional decision, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr M to accept or reject my decision before 12 February 2026.

A handwritten signature in blue ink, appearing to read 'Will Culley', with a horizontal line underneath.

Will Culley  
**Ombudsman**

## COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at the same general conclusions as our Investigator, but have gone into more detail in some of my findings. As a result, I'm issuing this provisional decision to give the parties a further opportunity to make submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is **16 December 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from the representatives of the estate of Mr M, 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

This is a complaint brought on behalf of the estate of the late Mr M. The complaint is that Allium Money Limited (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and participated in an unfair credit relationship with Mr M under Section 140A of the CCA.

Mr M's estate is represented by his daughter, Ms M, and a professional representative ("PR").

### What happened

This complaint relates to a timeshare purchase made by Mr M from a timeshare provider (the "Supplier") on 25 September 2019. Mr M had made a previous purchase in 2018. I've outlined the basic details below:

- The purchase made on 25 September 2019 (the "Time of Sale") was of a membership in the "Signature" version of the Supplier's "Fractional Club". Mr M bought 1,820 points in the Fractional Club, which were credited to an account with the Supplier every other year, and could be used to book accommodation (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 M's purchase paperwork (the "Allocated Property"). A unique feature of the "Signature" version of the membership was that Mr M also had the right to stay in the Allocated Property every other year, instead of being credited with points. The purchase cost £16,709 before the trade-in of Mr M's previous purchase, after which there was £8,909 to pay. Ms M was present with Mr M at the Time of Sale.
- The Supplier arranged a loan (the "Credit Agreement") with "H" (a predecessor of the Lender) for the balance of the purchase price and the consolidation of the debt associated with the previous purchase (£11,862). The loan was therefore for a total of £20,771 and this was repayable over 180 months at £239.96 per month. At some point the loan, and responsibility for complaints about it, was transferred from H to the Lender. I will use "Lender" to refer to both H and Allium Money, except where it is necessary to distinguish between both.
- In January 2022, Mr M died. Ms M says his estate received a bill of £19,228.96 from the Lender. This prompted a complaint from Ms M in May 2022. Ms M referred to the

following concerns:

- Proper affordability checks hadn't been carried out before granting the Credit Agreement.
- The timeshare had been misrepresented by the Supplier.
- The Supplier had shown no consideration or understanding after Mr M's death.
- Mr M had never been able to use the product. The Supplier also no longer existed, so what exactly was still being paid for?
- Mr M had been put under a lot of pressure to purchase the product, something he was particularly vulnerable to because he had been suffering from alcohol dependence syndrome and schizophrenia. He had not been in a fit state to understand what he'd been signing up for and the cooling off period had not been made clear.

The complaint was 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.

Ms M disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it has been passed to me. Ms M has since asked PR to represent her father's estate. PR has argued the Supplier improperly sold the Signature version of the Fractional Club membership to Mr M as an investment, in contravention of the law on selling timeshares. PR also provided a recent witness statement from Ms M.<sup>3</sup>

### **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.

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<sup>3</sup> I'm aware that, as early as October 2022, PR sent a letter of complaint to the Lender, after the complaint had already been referred to the Financial Ombudsman Service by Ms M. This letter of complaint is the same as I have seen submitted on behalf of many others of PR's clients and does not seem to be personalised to this complaint. I have chosen not to address the points made where these have not been also made either by Ms M, or made by PR following our Investigator's assessment.

I think it's also important at this stage to outline very briefly the general grounds on which Mr M's estate 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. While Ms M didn't fully articulate the grounds, I wouldn't necessarily expect her to have done so. However, based on the matters she has complained about, I would say the grounds are that Mr M's estate 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 this case, it means that the credit relationship between Mr M and the Lender can be found to have been unfair to him 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.

Finally, a note regarding which purchase I am considering in this decision: the Lender only financed the September 2019 purchase, and the previous purchase was financed by a *different* lender. For that reason, I can only consider the 2019 purchase. I want to make this clear because much of Ms M's original submissions, and her later witness statement, focus on the earlier purchase.

### Table of Summarised Findings

<b>Section 75 - Misrepresentations</b>	<b>Reason why this complaint doesn't succeed</b>
It was falsely represented that Mr M would be able to holiday every year with the Signature version of the membership.	There's insufficient persuasive evidence this was said by the Supplier, or of the precise words used or even whether these were false. The paperwork referred to the membership as being "bi-annual", but my understanding is that Mr M could have booked holidays every year if he had enough points to do so.
<b>Section 75 – Breaches of Contract</b>	<b>Reason why this complaint doesn't succeed</b>
The Supplier no longer exists, meaning it can't provide the services promised under the Purchase Agreement.	While certain companies within the Supplier's group have gone out of business, it's my understanding that members can still exercise their holiday rights under their contracts.
<b>Matters allegedly rendering the credit relationship unfair</b>	<b>Reason why this complaint doesn't succeed</b>

Mr M was pressured into making the purchase.	Ms M's submissions on this point appear to relate to the earlier purchase, in 2018. It's not clear to me if she says the Supplier applied improper pressure to Mr M in September 2019 also, but if she does, there's insufficient evidence relating to what happened at the Time of Sale for me to be able to reach a positive conclusion on this point.
The Lender failed to carry out the creditworthiness/affordability checks required by industry guidance or regulations.	While I think the Lender's approach to assessing Mr M's ability to afford the loan was open to criticism, the Credit Agreement appears to have been affordable. <b>See further details below.</b>
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 M's decision to buy the Fractional Club membership, to have rendered 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 Lender agreeing to provide the Credit Agreement to Mr M, and on the allegation that the Supplier sold or marketed the timeshare to him as an investment.

Before I do that though, I'm mindful of the fact that I've not addressed some of the things said by Ms M and I wanted to explain why. For example, I acknowledge and understand the points Ms M has made about her late father's health. I've not discussed this in further detail in my decision however because – based on Ms M's account of events – her father's health concerns were an important factor in the 2018 purchase, which I'm not considering here.

I've also carefully read Ms M's commentary about how the Supplier reacted after her father's death, and the feeling she had that the Supplier lacked consideration and understanding. However, it's not something it has been appropriate for me to look into further, because poor customer service from the Supplier is not something that the Lender will be responsible to Mr M's estate for.

### **The Supplier's alleged sale of the membership as an investment**

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 M 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 M's decision to go ahead with his purchase, to be able to arrive at a conclusion that the credit relationship between Mr M and the Lender had been 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 claim from Ms M that the Supplier had sold or marketed the membership to Mr M as an investment, or that this was something which had been important to his decision on the day. Indeed, there was no mention of anything like this in Ms M's previous submissions, which I thought had been quite detailed 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 this claim was made.

The claim was made by PR in its response to our Investigator's assessment. And Ms M refers, in the witness statement submitted by PR at the same time, to the Supplier having marketed the product as an investment and in her father holding a belief that, in the future, he'd have been able to sell the membership for a profit.

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.

There isn't any other evidence on file to corroborate Ms M's more recent evidence about her late father's motivations at the Time of Sale. As I noted earlier, Ms M's earlier testimony makes no mention of the things she has said more recently about the product being an investment. And so there seems to me to be a very real risk that her recollections were coloured by the judgment in *Shawbrook & BPF v FOS*. And with that being the case, I'm not persuaded that I can give her 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.

I think it is also worth me pointing out that, as with some of Ms M's other concerns, her testimony regarding the Supplier having sold the membership as an investment, focuses only on the 2018 purchase, which I'm unable to consider as part of this complaint.

### **The Lender's creditworthiness and affordability checks**

The rules the Lender needed to follow at the time it lent to Mr M, were set by the Financial Conduct Authority ("FCA"). Rather than set out all these rules here, it's possible to summarise them as follows:

The Lender had to assess Mr M's application for the Credit Agreement to check if he could afford to repay it in a sustainable way. Its assessment needed to be proportionate to the circumstances, taking into account the characteristics of the lending being proposed, and Mr M's financial situation.

In order to be sustainable, repayments would need to be made on time and out of income or savings (where Mr M had indicated that his savings would be used), without realising security or assets, and while meeting other reasonable commitments. The Lender had to assess whether the commitment Mr M was signing up to was likely to adversely impact his financial situation. And in doing all of the above, the Lender needed to take adequate steps to ensure the application information was relying on was correct.

An additional aspect of the rules which is relevant in particular to Mr M's case, is that where Mr M had indicated an intention to use his savings to make repayments, the Lender needed to take into account the purpose of the savings, the likelihood of them being available for the repayments, and any significant adverse impact on Mr M's financial situation caused by using his savings in this way. Another aspect of the rules which is particularly relevant here, is that it would be acceptable for the Lender to take into account a future increase in Mr M's income, where there was appropriate evidence that the increase would happen during the loan term.

The regulatory requirements thus set out, I'll move on to the checks the Lender carried out prior to lending to Mr M. Based on the evidence the lender has submitted, some of the information it relied on is unclear, but it is apparent it considered the following information initially:

- That Mr M was retired with a declared annual income of £12,000.
- That Mr M had estimated monthly bills of £368.08.
- That Mr M had other credit commitments of £138.03.

It's apparent the Lender wasn't satisfied with what it had seen, as the application was referred to an underwriter to look into Mr M's income further. The Lender asked to see a bank statement, and it received one covering 16 August 2019 to 16 September 2019.

Having reviewed the bank statement, the Lender's underwriter recorded the following note:

*"Income as stated from 2 x Pensions transactions fine ok to proceed...  
...Actual income: pension visible 250.76 & 760.71  
...Spending habits: No concerns cust[omer] has a healthy balance of £37k"*

It would appear, then, that the Lender had been satisfied the loan would be sustainably affordable, given what it had discovered of Mr M's income and taking into account the fact he had a £37,000 balance in his current account, along with its estimates of his other commitments.

However, this appears not to have been compliant with the FCA's rules – for reasons I'll explain. I think, while the Lender had requested Mr M's bank statement to verify his income, it wouldn't be acceptable simply to check the statement for income and then not take into account other information within that document. It does seem that the Lender took note of Mr M's balance of £37,000, but it should also have been apparent to the Lender that Mr M was spending far more each month than his income. While his bills appeared modest, he had withdrawn around £1,000 in cash over the statement period, meaning his expenditure was around £535 higher than his income. Ms M has explained that a large proportion of this money was spent on alcohol and cigarettes, but I wouldn't have expected the Lender to appreciate this in the circumstances.

In any event, it would have been clear to the Lender that Mr M would need to use his savings to meet his repayments. There's no evidence Mr M had indicated this is what he was intending to do, and based on the rate of depletion of Mr M's funds (including the repayments towards the Credit Agreement) his savings would have lasted only about 5 years – meaning the repayments would not be sustainable over the 15 year term of the loan. So to this extent, I don't think the Lender's assessment of affordability was in line with the regulatory expectations of the time. However, that doesn't necessarily mean the complaint should be upheld on this point. If it turns out the loan was in fact sustainably affordable, for instance, then it wouldn't be reasonable to uphold the complaint over a technical breach of the rules.

I questioned the Lender over its checks, and it said that Mr M had met their criteria and it had some concerns about taking into account Mr M's cash withdrawals as expenditure, given there was no way to tell how these had been spent or even *if* they were spent. However, the Lender did mention one relevant point – which was that Mr M had been coming up to state pension age and this would have improved his financial situation during the lifetime of the loan.

It would have been acceptable for the Lender to take into account a future increase in Mr M's income, and Ms M has confirmed Mr M did begin receiving a state pension of £580.44. This would have been around February 2021, meaning that (assuming his expenditure remained similar) his savings would be depleted by about £70 per month, as opposed to more than £500. I've calculated that, by the end of the loan, Mr M would still have had around £11,000 left. So it would appear that although the Lender's checks were flawed, the decision to lend was not an irresponsible one, because the loan does seem to have been sustainably affordable. So I don't think the deficiencies in the Lender's checks led to a situation where the credit relationship between Mr M and the Lender was rendered unfair to him.

It's unclear if Ms M is aware of this, but the Lender has confirmed that it wrote off the remaining £19,958 balance of the loan on 15 or 16 September 2025, and is no longer pursuing Mr M's estate for any repayment. While I appreciate this falls short of the compensation she was seeking for the estate, it may at least give some reassurance that the Lender has no intention of pursuing the debt further.

## **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 the Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with the late Mr M 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 his estate.

## **My provisional decision**

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

Will Culley  
**Ombudsman**