

## The complaint

Mr and Mrs C complain Shawbrook Bank Limited (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 them under Section 140A of the CCA.

Mr and Mrs C are represented in their complaint by a professional representative (“PR”).

## What happened

I issued a provisional decision on Mr and Mrs C’s complaint on 29 September 2025, in which I set out the background to the case and my provisional findings on it. A copy of that provisional decision is appended to, and forms a part of, this final decision, so it’s not necessary to go over the details again. However, in very brief summary:

- Mr and Mrs C bought a timeshare from a timeshare provider (the “Supplier”) on 16 February 2016 (the “Time of Sale”), for £15,989 (or £19,984 before the trade in of a previous timeshare). This was financed by a loan of £18,984 from the Lender (the “Credit Agreement”), which also consolidated some existing debt relating to the previous timeshare.
- The timeshare was a type of asset-backed timeshare which entitled Mr and Mrs C to more than holiday rights. It also entitled them to a share in the proceeds of a property named on their purchase agreement (the “Allocated Property”) after their contract came to an end.
- Mr and Mrs C sued the Supplier in the Spanish courts, leading to judgment in their favour in February 2021, declaring the timeshare contract null and void and requiring the Supplier to pay compensation. An appeal by the Supplier was dismissed in July 2023, but the Supplier subsequently failed to pay the ordered compensation.
- Mr and Mrs C later also complained, via a professional representative (“PR”), to the Lender about a number of concerns which included misrepresentations by the Supplier giving them a claim against the Lender under Section 75 of the CCA, and matters giving rise to an unfair credit relationship between them and the Lender.
- The Lender rejected the complaint and it was then referred to the Financial Ombudsman Service for an independent assessment.

In my provisional decision I said I didn’t think the complaint should be upheld. Again, my full findings can be found in the appended provisional decision, but in very brief summary:

- The Lender had not been unfair or unreasonable in declining Mr and Mrs C’s Section 75 claim for misrepresentation because:
  - Some of the alleged misrepresentations were in fact true statements or statements of opinion which there was no evidence to demonstrate were not honestly held. For example, a representation that Mr and Mrs C would be

able to go on holiday to New Zealand using their membership appears to have been true, not false.

- The remaining alleged misrepresentations were too vague and lacking in colour and context to be able to draw a positive conclusion that the Supplier had made false statements of specific fact to Mr and Mrs C.
- The Lender had not participated in a credit relationship with Mr and Mrs C that was unfair to them because:
  - Regardless of whether the Lender had carried out appropriate checks before lending to Mr and Mrs C, there was a lack of evidence the loan had been unaffordable for them at the time.
  - The credit broker which had arranged the Credit Agreement had the required permissions from the regulator at the time, and if the broker's representatives had been self-employed and didn't hold permissions in their own right, that wasn't a relevant point.
  - There was insufficient persuasive evidence that Mr and Mrs C had only signed up for the timeshare because their ability to make a choice had been significantly impaired by pressure from the Supplier.
  - If the Supplier had breached Regulation 14(3) of the Timeshare Regulations when selling the timeshare to Mr and Mrs C, this would need to have had a material impact on their decision to go ahead with their purchase, to render their credit relationship with the Lender unfair to them. However, Mr and Mrs C's own testimony didn't indicate they had been motivated to buy the timeshare by the prospect of it being an investment in the sense that it could or would make them a financial gain. Their testimony was highly focused on having purchased the product for holiday-related reasons, and a brief mention of "investment" lacked the colour or context to demonstrate the Supplier had breached the regulations or that this had had a material impact on Mr and Mrs C's purchasing decision.
- The judgments of the Spanish courts didn't automatically lead to a conclusion that the Credit Agreement was to be treated as rescinded, as PR had argued. There was significant doubt over whether it would be fair and reasonable to uphold the complaint on that basis, as more recent judgments had indicated English law would apply to contracts like Mr and Mrs C's, not the Spanish law the courts in Spain had relied on.

I invited the parties to the complaint to respond to my provisional decision. The Lender accepted the provisional decision. PR didn't agree with the provisional decision, and asked me to consider various additional points relating to the alleged sale of the timeshare as an investment and the Spanish judgments, but also relating to the alleged non-disclosure of a commission paid by the Lender to the Supplier for arranging the Credit Agreement. The case has now been returned to me to decide.

### **The legal and regulatory context**

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service’s website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

The Consumer Credit Sourcebook (“CONC”) – Found in the Financial Conduct Authority’s (the “FCA”) Handbook of Rules and Guidance

Below are the most relevant provisions and/or guidance as they were at the relevant time:

- CONC 3.7.3R
- CONC 4.5.3R
- CONC 4.5.2G

### The FCA’s Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses (“PRIN”). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

### **What I’ve decided – and why**

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Following the responses from both parties, I’ve considered the case afresh and having done so, I’ve reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn’t to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven’t commented on, or referred to, something that either party has said, this doesn’t mean I haven’t considered it.

Rather, I’ve focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

PR’s comments in response to the provisional decision relate only to the issue of whether the credit relationship between Mr and Mrs C and the Lender was unfair, and the matter of the Spanish court judgments. 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 well as highlighting what it seems as contradictions in the sales paperwork.

As outlined in my provisional decision, PR originally raised various other points of complaint, all of which I addressed at that time. But it didn’t make any further comments in relation to those in its response to my provisional decision. Indeed, it hasn’t said it disagrees with any of my provisional conclusions in relation to those other points. And since I haven’t been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my provisional decision. So, I’ll focus here on PR’s points raised in response.

## Section 140A of the CCA: did the Lender participate in an unfair credit relationship?

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

PR says the fact that Mr and Mrs C focus on holiday-related matters in their witness statement, doesn't mean that the prospect of the timeshare being an appealing financial investment, was *not* important to them. PR notes that this would be consistent with findings in other complaints where consumers were found to have had multiple material motivations for having made their purchase.

I understand PR's point, but the problem I have with Mr and Mrs C's testimony is that there is an almost *exclusive* focus on holiday-related matters and disappointment when their expectations regarding these aspects of the product, and the Supplier's customer service, were not met. For example, they refer to having "...discussed in depth about our dream holiday to New Zealand" with the Supplier across two different purchases. The single mention of "investment" comes at the end of the statement and feels to me like an afterthought. I remain of the view that their testimony falls short of demonstrating a breach by the Supplier of Regulation 14(3) of the Timeshare Regulations and which was a material factor leading them into making the purchase in question.

PR has also made a number of more general points about how the Supplier sold timeshares, which I have read, but without enough evidence that Mr and Mrs C's purchase was *materially* motivated by the prospect of their Fractional Club membership being an investment in the sense of something that they hoped or expected to make them a financial gain or profit, then I'm unable to say that any breach by the Supplier of Regulation 14(3) led to a credit relationship with Mr and Mrs C that was unfair to them.

### Alleged contradictions in the purchase documentation

I will also address PR's point regarding the apparent ambiguity in the proposed sale date of the Allocated Property. PR suggests that a delayed sale date could lead to an unfairness to Mr and Mrs C in the future, as any delay could mean a delay in the realisation of their share in the Allocated Property.

It does appear that the proposed date for the commencement of the sales process, as set out on the owners' certificate, is 31 December 2032. This date indicates that the membership has a term of 17 years. The ambiguity identified by PR is that in the Information Statement which would have been 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).<sup>1</sup>

While the wording of the Information Statement appears generic and is unfortunate in that it seems to suggest the sale date would be in 19 years or later, it seems clear to me that the commencement date for the start of the sales process in respect of the Allocated Property is 31 December 2032, as set out on the owners' certificate.

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

---

<sup>1</sup> We do not have a copy of the Information Statement in this case, although I am satisfied it would have said what PR says it does, given this was the Supplier's standard wording for this document.

### The implications of the Spanish court judgments

PR disagrees with my assessment of the implications of the Spanish court judgments. It argues that the judgment of the European Court of Justice ("ECJ") I referred to involved a different timeshare provider and therefore isn't applicable to Mr and Mrs C's scenario.

It also argues that the choice of law clause in Mr and Mrs C's timeshare contract (which chose English law – the law of Mr and Mrs C's country of residence) was an unfair term.

Furthermore, PR argues that it was essentially open to the Spanish courts to apply Spanish timeshare laws even in scenarios, like Mr and Mrs C's, where the law chosen in the contract was English law.

I'm not convinced that the fact the ECJ judgment involved a different timeshare provider means the principles set out in that judgment cannot be applied to analogous situations where the same choice of law issues are relevant.

Regarding the fairness of the choice of law clause – I note the ECJ commented on this in a judgment referred to by PR, C-821/21, which involved the Supplier.

The ECJ did not say that such clauses were objectionable, unless they failed to inform the consumer that they also would enjoy the protection of the laws of their country of habitual residence, so they are not "led into error" about this. The court did not say that the Supplier's choice of law clause in that case was objectionable, observing that the law selected under the choice of law clause was the same as that of the consumer's country of habitual residence.

A full copy of the contract in this case has never been provided by either party, but even if the Supplier failed to make Mr and Mrs C aware that they also enjoyed the protection of the laws of their place of habitual residence, I fail to see what difference that would have made given both sets of laws would have been the same.

Finally, PR's argument that the Spanish courts are free to apply Spanish laws in circumstances where a contract contains a choice of law clause selecting English law, doesn't appear to be supported by the case PR has cited. While it appears that this is something which is technically possible, the ECJ did not answer the question in its judgment insofar as it related to the choice of law clauses in timeshare contracts. The ECJ ruled that the question was inadmissible for want of detail.

Given what I've said above, I'll repeat what I said in my provisional decision, which is that in the absence of a successful English court ruling on a timeshare case paid for using a point-of-sale loan on similar facts to this complaint, and given the facts and circumstances, I'm still not persuaded it would be fair or reasonable to uphold it for the reasons PR has articulated relating to the Spanish court judgments.

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

PR now 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 and Mrs C in arguing that their credit relationship with the Lender was unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

Based on what I’ve seen, 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 and Mrs C but as the supplier of contractual rights they 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 them when arranging the Credit Agreement and thus a fiduciary duty.

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 and Mrs 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 and Mrs C into a credit agreement that cost disproportionately more than it otherwise could have.

What's more, in contrast to the facts of Mr Johnson's case, as I understand it, no payment between the Lender and the Supplier, such as a commission, was payable when the Credit Agreement was arranged at the Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not persuaded that the commercial 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 and Mrs 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 and Mrs C and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

### **My final decision**

For the reasons explained above, and in the appended provisional decision, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 19 January 2026.



Will Culley  
**Ombudsman**

## COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I'm minded to arrive at broadly the same conclusions as our Investigator, but I've explained my reasons in more detail so have decided to issue this provisional decision to give the parties to the complaint an opportunity to make further submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is **13 October 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 and Mrs 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 and Mrs C complain Shawbrook Bank Limited (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 them under Section 140A of the CCA.

Mr and Mrs C are represented in their complaint by a professional representative ("PR").

### What happened

This complaint relates to a timeshare purchase made by Mr and Mrs C from a timeshare provider (the "Supplier") on 16 February 2016. This appears to have been Mr and Mrs C's second purchase from the Supplier, having purchased a "Trial" membership in June 2015. I've outlined the basic details below:

- The purchase made on 16 February 2016 (the "Time of Sale") was of a membership in the Supplier's "Fractional Club". Mr and Mrs C bought 1,010 points in the Fractional Club, which could be used to book holiday accommodation annually. 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 and Mrs C's purchase paperwork. The purchase cost £19,984. After trading in the Trial membership as part of the deal, a balance of £15,989 was left to pay.
- The deal included some extra benefits, including membership of an exchange scheme, through which Mr and Mrs C could use their points to holiday in accommodation outside of the Supplier's own portfolio of resorts, and "bonus points" which could be used one time only.
- The Supplier arranged a loan (the "Credit Agreement") with the Lender for the balance of the purchase price, and to consolidate some existing borrowing relating to the Trial membership. The loan came to £18,984, repayable over 180 months at £219.37 per month. As far as I am aware, Mr and Mrs C are still repaying the loan.
- Mr and Mrs C sued the Supplier in the Spanish courts, leading to a judgment in their favour in February 2021, declaring the timeshare purchase null and void and ordering the Supplier to pay compensation. The Supplier appealed, and a more senior court in Spain dismissed this appeal in July 2023. It's my understanding that the Supplier has not paid any of the ordered compensation.

- In December 2021, through PR, Mr and Mrs 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 and Mrs 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 them 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 and Mrs C disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

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 and Mrs C seek 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 and Mrs C have 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 and Mrs C's case, it means that the credit relationship between them 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

It was falsely represented that the product was an investment that would "considerably appreciate in value".	There's insufficient evidence this was said. If it was said, it would not be untrue to describe the product as an investment as it contained investment features. Any statements regarding future value are likely to have been statements of honest opinion in the absence of evidence to 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 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 and Mrs C would also have signed to say they understood the Supplier would not buy back the membership. <sup>2</sup>
It was falsely represented that Mr and Mrs 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.
It was falsely represented that Mr and Mrs C would be able to holiday in New Zealand with their membership.	It was possible to use the product Mr and Mrs C purchased to holiday in New Zealand, so it was not untrue of the Supplier to have claimed this. <b>See further details below.</b>
Mr and Mrs C were pressured into making the purchase.	There is little evidence of what specifically the Supplier said or did which meant Mr and Mrs C felt they had no choice but to purchase. Mr and Mrs C also did not use the cooling-off period to cancel the purchase, which I would have expected had they only purchased because they were pressured into doing so.

<sup>2</sup> This was a standard declaration on the Supplier's purchase paperwork, which potential customers were required to initial against before signing at the bottom. While we don't have a copy of much of the paperwork in this case (including this page), I think it's more likely than not that it would have been completed at the Time of Sale.

The Lender failed to carry out the creditworthiness/affordability checks required by industry guidance or regulations.	Mr and Mrs C have 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 without the necessary regulatory permissions, meaning it was unenforceable.	It appears the entity which arranged the Credit Agreement held appropriate 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 entity's representatives isn't relevant.
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 and Mrs C's decision to buy the Fractional Club membership, to render the credit relationship between them and the Lender unfair. <b>See further details below.</b>
<b>Other matters</b>	<b>Reason why this complaint doesn't succeed</b>
The agreement to purchase the timeshare has been declared null and void in the Spanish courts due to illegality under Spanish law, meaning the Credit Agreement should be treated as rescinded.	More recent ECJ judgments suggest English law would apply to contracts like Mr and Mrs C's. This casts significant doubt on whether it would be fair and reasonable to uphold the complaint on this point. <b>See further details below.</b>

I'll now set out the expanded reasons for my decision relating to the alleged misrepresentations relating to holiday availability in New Zealand, potential breaches by the Supplier of Regulation 14(3) of the Timeshare Regulations, and the status of the timeshare contract under Spanish law.

### **The Supplier's statements about New Zealand do not appear to have been false**

Mr and Mrs C say that the Supplier had discussed their holiday desires with them, both in 2015 and 2016, and they'd always been clear that their dream holiday would be to go to New Zealand. Mr and Mrs C say the Supplier repeatedly assured them that they would be able to holiday in New Zealand if they purchased Fractional Club membership.

There is documentary evidence dating to the Time of Sale which supports Mr and Mrs C's account of events. It was the Supplier's usual practice to complete a "Holiday Planner" with potential customers to work out and demonstrate how the product they were being offered would meet their holiday needs. I have seen a copy of the Holiday Planner completed with Mr and Mrs C, and it features New Zealand prominently.

The Holiday Planner shows how Mr and Mrs C could use their points (including the bonus points) over the first three years of their membership. It gave an example of holidaying in Spain in the first year, and saving some of their unused points to go on two weeks holiday in New Zealand the following year, and then South Africa the year after. Certain parts of the text of the Holiday Planner appeared to have been marked with a highlighter. This included the words New Zealand and the letters "II" next to it.

"II" is an acronym for "Interval International", the exchange company which Mr and Mrs C had a membership to included with their purchase of the Fractional Club membership. It's my understanding, based on the contents of the Supplier's resorts brochure from the relevant time, that the Supplier did not have any resorts in New Zealand. However, resorts in

New Zealand were available via Interval International. Due to “II” appearing and having been highlighted on the Holiday Planner, I think on balance it’s likely the Supplier clarified this point at the Time of Sale – i.e. told Mr and Mrs C that they could go to New Zealand via their included Interval International membership.

It’s clear that the New Zealand question became a big point of contention for Mr and Mrs C. They made a witness statement in 2017 in which they wrote at length about their unhappiness relating to this issue. And there are notes on the Supplier’s systems which show Mr and Mrs C were in contact about it as early as August 2016. It seems the Supplier advised on that occasion that Mr and Mrs C needed to speak to Interval International about booking in New Zealand. Notes from 2017 state that the Supplier called Mr C about late fees, and on that call he complained he’d been the victim of misrepresentation because he’d been told he could go to New Zealand. The note goes on to say that the Supplier said it would look into what it could do for him, and that it emailed him later setting out three holiday options in New Zealand available in the next couple of months.

Overall, I think the Supplier told Mr and Mrs C at the Time of Sale that they could use their membership to holiday in New Zealand via Interval International. This was not untrue based on the available information, so I can’t conclude the Supplier’s statements on this point amounted to misrepresentation.

### **There’s very little evidence Mr and Mrs C were motivated to purchase by the prospect of a financial gain**

As I’ve indicated above, in order for any breach by the Supplier of Regulation 14(3) of the Timeshare Regulations to render the credit relationship between Mr and Mrs C and the Lender unfair to them, this would need to have had a material impact on their decision to go ahead with their purchase.

The witness statement Mr and Mrs C made before a notary in 2017 is reasonably contemporary with the events complained about, and I am inclined to accept it as being their genuine recollections of what occurred at the Time of Sale. As I mentioned earlier in this decision, much of the witness statement relates to the New Zealand issue, and being able to holiday in New Zealand comes across as being clearly the most important reason why Mr and Mrs C went ahead with the purchase.

That said, Mr and Mrs C do mention the word “investment” in one paragraph of their statement. They say that the Supplier informed them the *“ownership would be an investment for us and our children’s future, and would be easy to sell our product even back to the resort.”* As mentioned above, Mr and Mrs C would have needed to sign to say they understood the Supplier would not buy back the membership, and I think the rest of their comments here are lacking in colour and context. It’s unclear what specifically was said, what was meant by the word “investment” if it was said, or of what Mr and Mrs C understood it to mean in this context. In my view, this is simply not enough to go on – it falls a long way short of demonstrating that the Supplier breached the relevant regulations and that this had a material impact on Mr and Mrs C’s purchasing decision. My conclusion is that there’s insufficient evidence to find the credit relationship between Mr and Mrs C and the Lender was rendered unfair to them by any breach by the Supplier of Regulation 14(3). Based on the evidence available, I think Mr and Mrs C would likely have gone ahead with their purchase regardless.

### **It wouldn’t be fair and reasonable in the circumstances to treat the Credit Agreement as rescinded based on the judgments of the Spanish courts**

PR argues that, because the agreement to buy the timeshare was unlawful under Spanish law in light of certain information failings by the Supplier, I should treat that agreement and the Credit Agreement as rescinded by Mr and Mrs C and award them compensation accordingly – in keeping with the judgment of the UK’s Supreme Court in *Durkin v DSG Retail* [2014] UKSC 21 (*‘Durkin’*).

However, as the Lender hasn’t been party to any court proceedings in Spain, it seems to me that there is an argument for saying that the agreement to purchase the timeshare is valid under English law for the purposes of *Durkin*.

I also note that the agreement to purchase the timeshare is governed by English law. So, it isn’t at all clear that Spanish law would be held relevant if the validity of the agreement were litigated between its parties and the Lender in an English court. For example, in *Diamond Resorts Europe and Others* (Case C-632/21), the European Court of Justice (“ECJ”) ruled that, because the claimant lived in England and the timeshare contract was governed by English law, it was English law that applied, not Spanish, even though the latter was more favourable to the claimant in ways that resemble the matters seemingly relied upon by PR. I note the ECJ judgment was handed down after the appellate court in Spain had dismissed the Supplier’s appeal, so it would not have been considered when deciding Mr and Mrs C’s case.

Overall, therefore, in the absence of a successful English court ruling on a timeshare case paid for using a point-of-sale loan on similar facts to this complaint, and given the facts and circumstances of this complaint, I’m not persuaded that it would be fair or reasonable to uphold it for this reason.

## **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 and Mrs C’s Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them 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 them.

## **My provisional decision**

For the reasons explained above, I’m not minded to uphold Mr and Mrs C’s complaint.

Will Culley  
**Ombudsman**