

The complaint

Miss R complains Clydesdale Financial Services Limited (trading as Barclays Partner Finance) (the “Lender”) has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the “CCA”) and has participated in an unfair credit relationship with her under Section 140A of the CCA.

Miss R is represented in her complaint by a professional representative (“PR”).

What happened

I issued a provisional decision on Miss R’s complaint on 7 October 2025, in which I set out the background to the case and my provisional findings on it. A copy of that provisional decision is appended to, and forms a part of, this final decision, so it’s not necessary to go over the details again. However, in very brief summary:

- Miss R entered an agreement to buy a timeshare (the “Purchase Agreement”) from a timeshare provider (the “Supplier”) on 29 October 2015 (the “Time of Sale”), for £19,155, with a balance to pay of £15,160 to pay after trading in a previous “Trial” membership. This was financed by a loan of £19,253 from the Lender (the “Credit Agreement”), which included the consolidation of some existing debt.
- The timeshare was a type of asset-backed timeshare which entitled Miss R to more than holiday rights. It also entitled her to a share in the proceeds of a property named on her purchase agreement (the “Allocated Property”) after her contract came to an end.
- Miss R later complained, via PR, to the Lender about a number of concerns which included misrepresentations by the Supplier giving her a claim against the Lender under Section 75 of the CCA, and matters giving rise to an unfair credit relationship between her and the Lender.
- The Lender failed to respond to the complaint, which 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 would not have been unfair or unreasonable to decline Miss R’s Section 75 claim for misrepresentation because this had been time-barred under the Limitation Act 1980. Misrepresentations could be relevant however, to the question of whether or not the credit relationship between Miss R and the Lender was fair. In this case I didn’t think the allegations showed the credit relationship had been unfair to Miss R because:
 - Some of the alleged misrepresentations were in fact true statements or statements of opinion which there was no evidence to demonstrate were not honestly held.

- The remaining alleged misrepresentations were too vague and lacking in colour and context to be able to draw a positive conclusion that the Supplier had made false statements of specific fact to Miss R.
- The Lender had not participated in a credit relationship with Miss R that was unfair to her for any of the other reasons alleged because:
 - Regardless of whether or not the Lender had carried out appropriate creditworthiness checks, there was a lack of evidence the loan had been unaffordable for Miss R at the time.
 - It was not the case that the credit broker which had arranged the Credit Agreement had not held the necessary permissions from the Financial Conduct Authority.
 - I couldn't see that any allegedly unfair terms in the purchase agreement with the Supplier had been operated unfairly against Miss R or would be operated in such a way in the future.
 - Miss R hadn't been able to explain specifically what the Supplier had done which had made her feel as though she had no choice but to make the purchase in question, and if she had been pressured, I would have expected her to have cancelled the purchase during the cooling off period, which she had not.
 - It was possible the Supplier had breached Regulation 14(3) of the Timeshare Regulations by marketing the timeshare to Miss R as an investment, but I was not persuaded by her testimony as to this issue. This led me to conclude the Supplier had probably not breached the Regulations. I had some concerns over how late in the process Miss R had potentially been asked to record her memories, after many years and various events that could have influenced her recollections.

I also noted that Miss R's witness statement appeared to consist firstly of a narrative account, which contained a fair amount of colour and context, and which didn't make any mention of the timeshare being marketed as an investment, and then a brief list of bullet points which *did* make this allegation, and which I had seen in other consumer witness statements. I found it difficult to reconcile this apparent inconsistency, especially in light of doubts over *when* Miss R's statement had been written (it was unsigned and undated) and, on balance, I didn't think Miss R's testimony was sufficiently credible or persuasive to be able to conclude that there had been a breach by the Supplier of Regulation 14(3) that had led her into the Purchase Agreement.

I invited the parties to the complaint to respond to my provisional decision. The Lender didn't reply. PR didn't agree with the provisional decision, and asked me to consider various additional points, mostly relating to the alleged sale of the timeshare as an investment, but also relating to the alleged non-disclosure of a commission paid by the Lender to the Supplier for arranging the Credit Agreement and alleged discrepancies in the purchase paperwork. 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 Miss R and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to Miss R as an investment at the Time of Sale. It has also now argued for the first time that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship.

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

to change my conclusions in relation to them as set out in my provisional decision. So, I'll focus here on PR's points raised in response.

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

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

PR says it hadn't shared the Investigator's assessment on this complaint with Miss R, saying this was done in order not to influence her recollections. PR said Miss R was also unaware about the judgment handed down in *Shawbrook and BPF v FOS*¹. PR said this means her recollections have not been influenced by either the Investigator's assessment or the judgment. PR also said it had attached evidence in the form of a screenshot to show *when* Miss R's testimony had been received. The screenshot in question doesn't appear to have been attached to the email from PR, but it would not have changed my conclusions for reasons I explain below.

Further, PR 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. And neither does another point made by PR, which is that it didn't matter that Miss R had referred mostly in her witness statement to other benefits and disappointments relating to the timeshare, because she had also mentioned the fact that it had been sold as an investment, and that was enough to say that the Supplier had breached Regulation 14(3) and this had led to an unfair credit relationship.

I repeat my observation that Miss R's statement is not signed or dated, and was not received by the Financial Ombudsman Service until after the publication of the outcome of *Shawbrook & BPF v. FOS* and our Investigator's unfavourable assessment of the complaint. I also repeat my observation that Miss R's statement appears to be made up of two different sections. The first is a narrative account of her experiences with the Supplier which contain a decent amount of colour and context, and in which she expressly stated that she had made her purchase because she thought it would allow her to take the holidays she wanted in the countries she wanted to go to. These recollections could even be described as vivid. The second section is a list of bullet points, one of which contains what appears to be a clear recollection that the Supplier had sold the timeshare to her as an investment, but which I noted I had seen in exactly the same form in other consumers' witness statements. It is generic and doesn't feel like Miss R's "voice" at all.

It was a combination of these observations which meant I felt I couldn't attach enough weight to Miss R's recollection that the Supplier had sold the timeshare to her as an investment, to either conclude that the Supplier had in fact breached Regulation 14(3) or that this had been material to Miss R's purchasing decision at the Time of Sale.

PR has not addressed the concerns which emerged from the observations above. The problems with the witness statement go further than its provenance, so if PR's screenshot had indicated it had been received at an earlier point in time I would still not have sufficient confidence in it.

I maintain that there is a risk that Miss R's testimony, or parts of it, 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

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) ('*Shawbrook & BPF v FOS*').

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 Miss R's purchasing decision.

The discrepancies between dates on the Purchase Agreement and Miss R's timeshare certificate

I will also address PR's point regarding the apparent ambiguity in the purchase paperwork. This relates to the proposed sale date of the Allocated Property. PR suggests that a delayed sale date could lead to an unfairness to Miss R in the future, as any delay could mean a delay in the realisation of her 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 2033. This date indicates that the membership has a term of 18 years. This is confirmed in a "Member's Declaration" initialled and signed at the Time of Sale. 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).

The wording in the Information Statement appears to be the Supplier's standard wording for this particular document. It's unfortunate that it indicates the sale date will be in 19 years or later, but it seems clear to me that the commencement date for the start of the sales process is 31 December 2033 as confirmed in the Member's Declaration.

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

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

The 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 Miss R in arguing that her credit relationship with the Lender was unfair to her 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 Miss R, 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 Miss R 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 Miss R.

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 Miss R but as the supplier of contractual rights she 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 her when arranging the Credit Agreement and thus a fiduciary duty.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, the Lender didn't pay the Supplier any commission 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 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 Miss R.

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 Miss R and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her.

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 Miss R to accept or reject my decision before 10 February 2026.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at broadly the same conclusions as our Investigator, but I have explained some of my findings in more detail. I've decided to issue this provisional decision to allow 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 **21 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 Miss R, 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

Miss R complains Clydesdale Financial Services Limited (trading as Barclays Partner Finance) (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with her under Section 140A of the CCA.

Miss R is represented in her complaint by a professional representative ("PR").

What happened

This complaint relates to a timeshare purchase made by Miss R from a timeshare provider (the "Supplier") on 29 October 2015. This was the second of three purchases made by Miss R that I'm aware of. She had previously purchased a "Trial" membership from the Supplier, and went on to make a third purchase in August 2016. I've outlined the basic details of the purchase which is the subject of this complaint below:

- The purchase made on 29 October 2015 (the "Time of Sale") was of a membership in the Supplier's "Fractional Club". Miss R bought 950 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 Miss R's purchase paperwork. The purchase cost £19,155. The Trial membership was traded in against this price, leaving a balance of £15,160 to pay.
- The Supplier arranged a loan (the "Credit Agreement") with the Lender for the £15,160 balance of the purchase price, plus refinancing of existing debt relating to the Trial membership. This resulted in a loan of £19,253 which was repayable over 180 months at £222.37 per month. The loan was settled early, in October 2016.
- In January 2022, through PR, Miss R 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 Miss R sought to hold the Lender liable under Section 75 of the CCA, and matters which were alleged to have rendered the credit relationship between her and the Lender unfair under Section 140A of the CCA.

The Lender failed to respond to 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.

Miss R 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 Miss R 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 Miss R 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.

That said, I don't think Section 75 is of assistance to Miss R. Her Section 75 claim relates to misrepresentation, and because the claim was first brought to the Lender more than six years after her cause of action accrued in relation to the misrepresentations she alleges, her claim was time-barred under the Limitation Act 1980. What this means is that the Lender would have had a defence to her claim, and I don't think it would be reasonable to expect a lender to honour a claim brought out of time in this way. Misrepresentation can however be relevant to the question of the fairness of the credit relationship between Miss R and the Lender, so I have gone on to consider these allegations made on Miss R's behalf within the context of her Section 140A claim below.

Section 140A of the CCA operates in a more complex manner than Section 75. Insofar as is relevant to Miss R's case, it means that the credit relationship between her and the Lender can be found unfair because of anything done (or not done) by, or on behalf of, the Lender.

An unfair credit relationship can also be based on the terms of a related agreement (such as the agreement to buy the timeshare) and, when combined with Section 56 of the CCA, on anything done or not done by the Supplier on the Lender's behalf before the making of the timeshare or loan agreements. The Supplier's acts or omissions during the process of negotiations leading up to the purchase are deemed to be the Lender's responsibility.

In the interests of efficiency and ease of reading, I have set out my findings in a table format. Where a particular finding requires further explanation or analysis, I have indicated this and provided the further explanation below the table.

Table of Summarised Findings

Section 140A - 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 a lack of 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 a lack of persuasive evidence these representations were made. If they were, there's insufficient evidence they were anything other than statements of honest opinion.
It was falsely represented that the Fractional Club membership could be sold back to the Supplier or easily to third parties at a profit.	There's very little colour or context to this allegation, meaning it's difficult to conclude the Supplier represented this to be the case. Miss R also would have signed to say she understood the Supplier would not buy back the membership. ²
It was falsely represented that Miss R would have access to "the holiday apartment" at any time all year round.	This is a vague allegation which also lacks sufficient detail, context or colour to demonstrate the Supplier made such statements.
Matters allegedly rendering the credit relationship unfair	Reason why this complaint doesn't succeed
Miss R was pressured into making the purchase.	There is little evidence of what specifically the Supplier said or did which meant Miss R felt she had no choice but to purchase. Miss R also did not use the cooling-off period to cancel the purchase, which I would have expected had she only purchased because she was pressured into doing so.

² We do not have a copy of the full contractual paperwork in this case because it has not been provided by either party. However, it was the Supplier's standard practice to have prospective customers sign to agree to a declaration which included, among other statements, that the Supplier would not buy back the membership. I think it's more likely than not, given this was the Supplier's normal practice, that Miss R would have signed such a declaration.

The Lender failed to carry out the creditworthiness/affordability checks required by industry guidance or regulations.	Miss R has not provided evidence that the loan was actually unaffordable, which would need to be shown if the complaint were to succeed on this point.
The Credit Agreement was arranged by self-employed individuals who didn't hold the relevant regulatory authorisations, meaning it was unenforceable.	It appears the entity which arranged the Credit Agreement held the relevant 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 Supplier's salespeople is not relevant.
The agreement to purchase the timeshare included terms which were unfair to Miss R, such as terms allowing the Supplier to forfeit the timeshare for minor breaches of the agreement.	While the agreement to purchase does appear to contain terms which could be operated in an unfair way, I've not seen evidence they have been operated in such a way with respect to Miss R, nor that it's likely this would happen in future.
The Supplier marketed and sold the membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations.	Based on the available evidence, including a witness statement from Miss R, I don't think it's likely the Supplier marketed or sold the product to her in this way. See further details below.

I'll now set out the expanded reasons for my decision relating to the allegation that the Supplier sold or marketed the fractional timeshare to Miss R as an investment.

As noted above, the legal and regulatory context to complaints such as Miss R's is now widely shared through the publication of hundreds of decisions by the Financial Ombudsman Service. So I'll say only that for the credit relationship between Miss R and the Lender to be rendered unfair to her, 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 to Miss R as an investment; and
2. This improper selling or marketing of the product had a material impact on Miss R's decision to go ahead with her purchase.

Prior to August 2023, we had no evidence from Miss R, in her own words, as to what happened at the Time of Sale or what her state of mind was at that time. We had only the letter of complaint from PR, which was essentially identical in content and form as numerous other letters of complaint I have seen from PR on behalf of other clients. In other words, it was generic in nature and of very little assistance in determining what may have happened at the Time of Sale or why Miss R made her purchase.

It was only after the judgment in *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin)* ('Shawbrook & BPF v FOS') was handed down, that we received a witness statement from Miss R, via PR. This is unsigned and undated, but PR says it was taken at some point in May 2021. 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, and so I find it difficult to understand why the Financial Ombudsman Service was only given such evidence when it was.

The witness statement consists of three pages setting out, in prose, a narrative of Miss R's experiences with the Supplier. This is followed by just over a page of bullet points. I note that Miss R does not say or suggest at any point in the three-page narrative, that the Supplier marketed or sold the Fractional Club membership to her as an investment. Indeed, Miss R only mentions the fractional aspect of the membership in the following paragraph:

"We were obviously showing signs that we may not sign..it suddenly came about that someone had just traded in their fractional share in a property at their Malaga resort and we were very lucky as they didn't come up very often... They stated that they could give us a special deal on the share and put a deal together with them suggesting that we would be given a good level of points[s] as well."

Shortly after this, when explaining why she made the purchase, Miss R stated:

"We finally agreed to go with the full membership thinking we would be able to take the holidays we wanted to the countries we wanted to visit..."

So it would appear, based on the narrative part of the witness statement, that the Supplier did not sell the Fractional Club membership in a way which breached the relevant regulations, nor did Miss R have any kind of notion of making a financial gain when she made her decision to purchase.

The bullet-pointed section of the witness statement is quite different. It contains the following point:

"We were informed that the purchase price for our timeshare fractional ownership products would be an investment which would see a profit when the properties were sold in 18 years' time. We were told that Spanish house prices had fluctuated over the last few years but generally they performed similar to the UK, doubling every 8-10 years. We were led to believe that we owned a fraction of the apartment, similar to a leasehold flat, which had a monetary resale value that could be recouped at the end of the term; we now understand that this timeshare has little or no value and is unlikely to be sold with repayment of our purchase price and profits as expected."

On the face of it, this seems to be a clear recollection by Miss R that the Supplier sold the Fractional Club membership to her as an investment. However, this point is inconsistent with the narrative section of the witness statement, which makes no mention of the Supplier having sold the product in this way. I also note that I have seen this paragraph, in identical form (other than the number of years in which the properties would be sold), included in other witness statements PR has provided for complaints from other clients. It appears to be a standard paragraph. I don't know how it came to be included in the list of bullet points at the end of Miss R's statement, or if Miss R saw or agreed to its accuracy given it appears not to be consistent with the rest of what she recalled. As I said earlier, the statement is neither signed nor dated.

In the circumstances, given the level of colour and context to the narrative part of the witness statement in which Miss R *doesn't* recall the product being sold or marketed as an investment, and the apparently generic bullet point in which this allegation is made *later*, I'm minded to conclude that it's *unlikely* the Supplier breached Regulation 14(3) of the Timeshare Regulations during this particular sale. It follows that I don't think the credit relationship between Miss R and the Lender was rendered unfair to her 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 Miss R's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement that was unfair to her 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 her.

My provisional decision

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

Will Culley
Ombudsman