

The complaint

Mr B complains 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 him under Section 140A of the CCA.

Mr B is represented in his complaint by a professional representative (“PR”). He was previously represented by a different representative, PR1.

What happened

I issued a provisional decision on Mr B’s complaint on 6 November 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 B bought a timeshare from a timeshare provider (the “Supplier”) on 4 July 2016 (the “Time of Sale”), for £19,984, reduced to £15,989 after the trade in of an existing timeshare. This was financed by a loan of £19,937 from the Lender (the “Credit Agreement”), which also consolidated borrowing from Mr B’s previous timeshare purchase.
- The timeshare was a type of asset-backed timeshare which entitled Mr B 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 B complained, in May 2019, via PR1, to the Lender about a number of concerns which included misrepresentations by the Supplier giving Mr B a claim against the Lender under Section 75 of the CCA, and matters giving rise to an unfair credit relationship between Mr B and the Lender. Another representative, PR later took over the case and sent a new set of complaint arguments to the Lender in February 2022.
- The Lender rejected the complaint in full and the matter was 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 B’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.
 - The remaining alleged misrepresentations were too vague and lacking in

specifics, colour and context to be able to draw a positive conclusion that the Supplier had made false statements of specific fact to Mr B.

- The Lender had not participated in a credit relationship with Mr B that was unfair to him because:
 - Regardless of whether the Lender had carried out appropriate checks before lending to Mr B, there was a lack of evidence the loan had been unaffordable for him at the time.
 - I didn't think it would have been immediately obvious to the Supplier that the timeshare might have been unsuitable for Mr B and his wife, nor had it been suggested that Mr B or his wife had informed the Supplier of anything which may have made it unsuitable for them.
 - The Credit Agreement had not been arranged by an unauthorised credit broker.
 - It was possible the Supplier had breached Regulation 14(3) of the Timeshare Regulations by marketing the timeshare to Mr B as an investment, but I was not persuaded by Mr B's testimony as to this issue. I had concerns over how late in the process Mr B had been asked to record his memories, after many years and various events that could have influenced his recollections. I didn't think I could attach much weight to his recollections as a result.

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, 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. 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 B and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to Mr B 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 Mr B, saying

this was done in order not to influence his recollections. PR said Mr B was also unaware about the judgment handed down in *Shawbrook and BPF v FOS*¹. PR said this means his 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 Mr B'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*.

I have thought about what PR has said, but on balance, I don't find it a credible explanation of the contents of Mr B's evidence. Here, PR responded to our Investigator's assessment to say that Mr B alleged that Fractional Club membership had been sold to him as an investment and it provided evidence from Mr B to that effect. I fail to understand how Mr B disagreed with the assessment on the basis that the timeshare was sold as an investment if he didn't know our Investigator's conclusions. It follows, in my view, that Mr B did know about our Investigator's assessment before his evidence was provided.

So, I maintain that there is a risk that Mr B's testimony, vivid or not, was coloured by later events such as our 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 have to treat it with considerable caution and 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 Mr B's purchasing decision.

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

I will also address a point PR has made regarding the apparent ambiguity in the proposed sale date of the Allocated Property. PR suggests that a delayed sale date could have led to an unfairness to Mr B in the future, as any delay could have meant a delay in the realisation of his share in the Allocated Property.

It does appear that the proposed date for the commencement of the sales process, as set out on the owners' certificate, is 31 December 2031. This date indicates that the membership has a term of 16 years. I can see this is confirmed in a "Member's Declaration" Mr B signed, which also quotes this date. 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).

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

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*').

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 and 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 provision of information by the Supplier at the Time of Sale

PR says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd*, *Wrench v FirstRand Bank Ltd* and *Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('*Hopcraft, Johnson and Wrench*').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship...was unfair" (see paragraph 327);
2. The failure to disclose the commission; and
3. The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. The size of the commission as a proportion of the charge for credit;
2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);
3. The characteristics of the consumer;
4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and
5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, it sets out principles which apply to credit brokers other than car dealer-credit brokers. So, when

considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mr B in arguing that his credit relationship with the Lender was unfair to him for reasons relating to commission given the facts and circumstances of this complaint.

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 B 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.

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 B, 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 him into a credit agreement that cost disproportionately more than it otherwise could have.

What's more, in stark 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 currently 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 B.

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 B and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 January 2026.



Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've decided to issue a provisional decision to give the parties to the complaint a further opportunity to make submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is **20 November 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from Mr B, 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 B complains 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 him under Section 140A of the CCA.

Mr B is represented in his complaint by a professional representative ("PR2"). He was previously represented by a different company, PR1.

What happened

This complaint relates to a timeshare purchase made by Mr B from a timeshare provider (the "Supplier") on 4 July 2016. He had made one earlier purchase of a "Trial" membership from the Supplier, in April 2016, and later bought a "Signature" membership from the Supplier in February 2017. I've outlined the basic details of the July 2016 purchase below:

- The purchase made on 4 July 2016 (the "Time of Sale") was of a membership in the Supplier's "Fractional Club. Mr B bought 1,010 points in the Fractional Club, which could be used to book holiday accommodation annually (the "Purchase Agreement"). This type of timeshare was also asset-backed, meaning it included a share in the future sale proceeds of a specific apartment named on the Purchase Agreement (the "Allocated Property"). The purchase cost £19,984, but after Mr B's Trial membership was traded in against this, there was a balance of £15,989 to pay.
- The Supplier arranged a loan with the Lender for £19,937 (the "Credit Agreement"). The loan was larger than the balance of the purchase price, because it included the consolidation of existing borrowing relating to Mr B's Trial membership. The loan was repayable over 180 months at £230.38 per month.
- In May 2019, through PR1, Mr B 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 PR1 can be found in the table below, but broadly-speaking they included misrepresentations for which Mr B sought to hold the Lender liable under Section 75 of the CCA, and matters which were alleged to have rendered the credit relationship between him and the Lender unfair under Section 140A of the CCA. PR2 later took over and made another complaint to the Lender on Mr B's behalf, in February 2022. PR2's concerns were in some respects different and can also be found in the table below.

The Lender rejected the complaint in full. The matter was originally referred to the Financial Ombudsman Service by PR1. While the case was waiting to be assessed, PR1 ceased to be authorised as a professional representative and, after a time, PR2 took over the matter from Mr B's side, submitting the additional complaint points referred to above. The case was eventually assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mr B disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

The legal and regulatory context

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

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context here.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having done that, I do not think this complaint should be upheld.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

I think it's also important at this stage to outline very briefly the general grounds on which Mr B seeks redress from the Lender in relation to what are, at least in part, the *Supplier's* alleged wrongdoings as opposed to the Lender's. The grounds are that Mr B has a claim under Section 75 of the CCA, and Section 140A of the CCA.

Section 75 of the CCA gives a person who has purchased goods or services with certain kinds of credit, a right to claim against their lender in respect of any breach of contract or misrepresentation on the part of the supplier of those goods or services. This is subject to certain technical conditions being met, which I am satisfied have been met in this case.

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

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

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

Table of Summarised Findings

Section 75 - Misrepresentations	Reason why this complaint doesn't succeed
It was falsely represented that Mr B would have yearly worldwide holidays, but it turned out there was a lack of availability.	No specifics have been provided regarding the alleged lack of availability, nor what the Supplier actually said at the Time of Sale about this. It is difficult to conclude the availability of holidays was misrepresented on the basis of such limited evidence.
It was falsely represented that the resorts were exclusive to timeshare members, but in fact they could be booked by ordinary members of the public.	The Supplier's marketing literature described its resorts as "mixed use", and I've found no other evidence to support a general allegation that the Supplier claimed its resorts were exclusive to members.
It was falsely represented that the product was an investment that would "considerably appreciate in value".	There's insufficient persuasive evidence this was said. If it was said, it would not be untrue to describe the product as an investment as it contained investment features. Any statements regarding future value are likely to have been statements of honest opinion in the absence of evidence to show otherwise.
It was falsely represented that there would be a considerable return on investment because the purchase involved a share in a property that would increase in value.	As per the point above, there is insufficient persuasive evidence these representations were made. If they were, there's insufficient evidence they were anything other than statements of honest opinion.
It was falsely represented that the Fractional Club membership could be sold back to the Supplier or easily to third parties at a profit.	There's very little colour or context to this allegation, meaning it's difficult to conclude the Supplier represented this to be the case. Mr B also signed to say he understood the Supplier would not buy back the membership.
It was falsely represented that Mr B 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
The Supplier failed to take reasonable steps to ensure the product was suitable for Mr B and his wife.	Based on the points Mr B has made to support this argument, I am not convinced the product was unsuitable at the Time of Sale or that the Supplier would have been aware of anything which may have made the product unsuitable. See further details below.

Mr B was pressured into making the purchase.	There is little evidence of what specifically the Supplier said or did which meant Mr B felt he had no choice but to purchase. Mr B also did not use the cooling-off period to cancel the purchase, which I would have expected had he only purchased because he was pressured into doing so.
The Lender failed to carry out the creditworthiness/affordability checks required by industry guidance or regulations.	Mr B 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 necessary permissions from the Financial Conduct Authority, making it unenforceable.	It appears the entity which arranged the Credit Agreement held the right permissions from the Financial Conduct Authority at the relevant time, so the agreement was not arranged by an unauthorised credit broker. The employment status of that entity's representatives isn't relevant.
The agreement to purchase the timeshare included terms which were unfair to Mr B, including 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 that way with respect to Mr B, 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.	While it's possible the Supplier marketed the product in this way, it would need to have played a material part in Mr B's decision to buy the Fractional Club membership, to render the credit relationship between him and the Lender unfair. See further details below.

I'll now set out the expanded reasons for my decision relating to the suitability of the product, and the Supplier's alleged marketing or sale of the Fractional Club membership as an investment.

Concerns over the suitability of the product

The Supplier was not providing regulated advice on the suitability of its products to Mr B, so it did not have the same kind of extensive duties which PR1 suggested when it originally made its complaint. That said, I think there could be scenarios where the Supplier, in selling a product which it was aware was clearly unsuitable for a specific purchaser, might cause unfairness in the credit relationship between the purchaser and a linked lender.

Based on an email Mr B sent to the Financial Ombudsman Service at a time when he was not represented by a professional representative, it seemed he considered the Fractional Club membership was unsuitable for him and his wife (who purchased the product with him jointly), due to his wife's age at the Time of Sale. Mr B explained to us in 2020 that his wife was now in her early 80s and unable to travel.

We recently asked PR2 to provide some more information about this, and it explained that Mr B and his wife had travelled by rail to Spain in 2017 on the occasion they upgraded their Fractional Club membership to a "Signature" membership. This was because Mrs B did not

want to fly any more due to health reasons. However, due to train travel through Europe being a long and arduous process, after 2017 Mr and Mrs B took all their holidays in the UK.

Based on the available evidence on this point, I don't think the Supplier would have been aware of anything, certainly at the Time of Sale, which would make the product it was selling unsuitable for Mr and Mrs B. I don't think that age alone would make Fractional Club membership unsuitable for someone, although health problems might do. It's not been suggested that Mr or Mrs B informed the Supplier that, due to health problems, they would no longer be able to travel, or that it would have been immediately obvious to the Supplier that Mrs B had health problems which would restrict her ability to use the product.

Given I think it's unlikely the Supplier would have been aware of the matters Mr B mentions which might have made the membership unsuitable for his wife, I'm unable to come to a conclusion that the credit relationship between Mr B and the Lender was rendered unfair to him for this reason.

The Supplier's alleged breaches of Regulation 14(3) of the Timeshare Regulations

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

Prior to January 2024, we had no evidence from Mr B in his own words, as to what happened at the Time of Sale or what his state of mind was at that time. We had only the letters of complaint from PR1 and PR2. The letter from PR1 made *no* allegation that the product had been marketed or sold as an investment. PR2's letter was essentially identical in content and form as numerous other letters of complaint I have seen from PR2 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 Mr B made his 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 Mr B, via PR2, in which he recalled the Supplier having sold the timeshare to him as an investment. 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.

There isn't any other evidence on file to corroborate Mr B's very recent evidence about what happened at the Time of Sale and what his motivations were, and in light of this there seems to me to be a very real risk that his 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 his written recollections the weight necessary to find that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

That doesn't mean that Mr B wasn't interested in a share of the Allocated Property. But he doesn't persuade me that his purchase was motivated by this share and the possibility of making a financial gain from it. All of which is to say that, if the Supplier did in fact breach Regulation 14(3) of the Timeshare Regulations, I don't think this was material to the decision that Mr B made. So I conclude that the credit relationship between Mr B and the Lender was not rendered unfair to him, even if the Supplier breached the relevant regulations.

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 B's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

My provisional decision

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

Will Culley
Ombudsman