

The complaint

Mrs S complains Tandem 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 her under Section 140A of the CCA.

Mrs S is represented in her complaint by a professional representative (“PR”).

What happened

I issued a provisional decision on Mrs S’s complaint on 21 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.¹ However, in very brief summary:

- Mrs S entered an agreement to buy a timeshare (the “Purchase Agreement”) from a timeshare provider (the “Supplier”) on 22 July 2019 (the “Time of Sale”), for £21,529, with £10,999 to pay after trading in her existing timeshare. This was financed by a loan for the £10,999 balance from the Lender² (the “Credit Agreement”).
- The timeshare was a type of asset-backed timeshare which entitled Mrs S 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.
- Mrs S 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 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 Mrs S’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.

¹ Some formatting errors were present in the original provisional decision, which have been corrected in the version appended to this final decision.

² The other party to the Credit Agreement was originally another lender, “H”, but the loan has been assigned to the Lender, which is now the entity responsible for the complaint.

- 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 Mrs S.
- The Lender had not participated in a credit relationship with Mrs S that was unfair to her 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 Mrs S 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 considered the question of whether the individual sales representatives had been self-employed was not relevant.
 - I couldn't see that any allegedly unfair terms in the purchase agreement with the Supplier had been operated unfairly against Mrs S or would be operated in such a way in the future.
 - Mrs S 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 Mrs S as an investment, but I was not persuaded by her testimony as to this issue. I had concerns over how late in the process Mrs S had been asked to record her memories, after many years and various events that could have influenced her recollections. Ultimately, I felt I could not attach enough weight to Mrs S's testimony on this issue. And, even if I had been able to do so, I considered her testimony did not support a conclusion that any breach by the Supplier of Regulation 14(3) had been material to her purchasing decision.

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, 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 Mrs S and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to Mrs S as an investment at the Time of Sale. It has also now argued for the first time that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship.

As outlined in my provisional decision, PR originally raised various other points of complaint, all of which I addressed at that time. But 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 Mrs S, saying this was done in order not to influence her recollections. PR said Mrs S was also unaware about the judgment handed down in *Shawbrook and BPF v FOS*³. PR said this means her recollections have not been influenced by either the Investigator's assessment or the judgment.

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

Part of my assessment of Mrs S's testimony was to consider *when* it was written, and whether it may have been affected by external factors such as the widespread publication of the outcome of *Shawbrook and BPF v FOS*.

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

So, I maintain that there is a risk that Mrs S's testimony was coloured by the Investigator's assessment and/or the outcome in *Shawbrook & BPF v FOS*. And, on balance, the way in which the evidence has been provided makes me conclude that I can place little weight on it.

And even if I could attach much weight to Mrs S's testimony, I have the same concerns I did in my provisional decision, in which I said:

"I'd also observe that in her witness statement, Mrs S appears to allege only that the Supplier marketed or sold the original Fractional Club membership to her as an investment, and not the Signature variation which this complaint relates to. Based on what Mrs S has said, the Supplier presented the Signature variation as a kind of solution to concerns she had over holiday availability and booking problems with her existing membership. So I'm not convinced, even if I could put much weight on what Mrs S has said, that the prospect of the Signature variation leading to a financial gain for her in the future, was material to her decision to go ahead."

PR's comments do not address these concerns. If I follow what PR has said correctly, it suggests that the fact Mrs S recalled the Supplier had sold her a timeshare as an investment, coupled with an alleged propensity of the Supplier to market or sell timeshares as investments in general, means that the Supplier sold the timeshare to her at the Time of Sale as an investment and this was material to her purchasing decision. I don't find this persuasive, for essentially the same reasons I articulated in the provisional decision: Mrs S only refers to the Supplier having sold her an *earlier* timeshare as an investment, and indicates the purchase which is the subject of this complaint was marketed to her as a means of solving problems with her existing membership. I don't think I can reasonably draw the conclusions from Mrs S's testimony that PR is inviting me to.

So, ultimately, for the above reasons, along with those I already explained in my provisional

³ *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*').

decision, I remain unpersuaded that any breach of Regulation 14(3) was material to Mrs S's purchasing decision.

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

I will also address PR's point regarding an apparent ambiguity in the proposed sale date of the Allocated Property. PR suggests that a delayed sale date could lead to an unfairness to Mrs S 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 2034. This same date is set out under point 1 of the Member's Declaration, which has been initialled and signed by Mrs S. This date indicates that the membership has a term of 15 years. The ambiguity identified by PR is that in the Information Statement provided as part of the purchase documentation it says the following:

*"The Owning Company will retain such Allocated Property until the automatic sale date in **19 years time** or such later date as is specified in the Rules or the Fractional Rights Certificate."* (bold my emphasis).

While it's unfortunate that what appears to be the Supplier's standard wording conflicts with the dates which appear elsewhere in the Purchase Agreement, it seems clear to me that the commencement date for the start of the sales process is 31 December 2034. This actual date is repeated in the sales documentation as I've set out above.

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

The 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 Mrs S 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 Mrs S, nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led Mrs S into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But as I've said before, the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I don't currently think any such failure is itself a reason to find the credit relationship in question unfair to Mrs S.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mrs S entered into wasn't high. At £274.98, it was only 2.5% of the amount borrowed and even less than that as a proportion of the charge for credit. So, had she known at the Time of Sale that the Supplier

was going to be paid a flat rate of commission at that level, I'm not currently persuaded that she either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mrs S had no obvious means of her own to pay for the timeshare. And at such a low level, the impact of commission on the cost of the credit she needed doesn't strike me as disproportionate. So, I think she would still have taken out the loan to fund her purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mrs S 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.

Overall, therefore, I'm not currently persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mrs S.

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 Mrs S and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

Commission: The Alternative Grounds of Complaint

While I've found that Mrs S's credit relationship with the Lender wasn't unfair to her for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Mrs S's complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mrs S (i.e., secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mrs S a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to her. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think she would still have taken out the loan to fund her purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

My final decision

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

this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 11 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 am issuing a provisional decision to give the parties to the complaint a further opportunity to provide submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is **4 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 Mrs S, or if they tell me they accept my provisional decision, I may arrange for the complaint to be closed as resolved without a final decision.

The complaint

Mrs S complains Tandem 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 her under Section 140A of the CCA.

Mrs S is represented in her complaint by a professional representative ("PR").

What happened

This complaint relates to a timeshare purchase made by Mrs S from a timeshare provider (the "Supplier") on 22 July 2019. This was not Mrs S's first purchase from the Supplier, although there is limited information available about her previous purchase(s). I've outlined the basic details below:

- Mrs S was an existing member of what I will refer to as the Supplier's "Fractional Club". This was a kind of timeshare membership where a purchaser is entitled to a number of "points" annually, to be redeemed for holiday accommodation within the Supplier's portfolio. This kind of membership was also asset-backed, meaning it included a share in the future sale proceeds of a specific timeshare apartment named on the purchase paperwork (the "Allocated Property"). Mrs S had 810 points in the Supplier's Fractional Club, prior to 22 July 2019.
- The purchase made on 22 July 2019 (the "Time of Sale") was of a membership in what I will refer to as the "Signature" variation of the Supplier's Fractional Club. Mrs S exchanged her 810 existing points, for 1,280 points in the Signature variation (the "Purchase Agreement"). These points could also be used to book holiday accommodation annually, but Mrs S additionally had the option to stay in the Allocated Property in a specific week of the year, if she wished to do so instead of using her points. The Allocated Property was a more luxurious apartment than the one which would have been named on Mrs S's previous membership. The Signature variation of the Fractional Club membership was also asset-backed in the same way as Mrs S's previous membership. The purchase cost £21,529. After an allowance of £10,530 was given for the trade-in of the previous membership, Mrs S had £10,999 to pay.
- The Supplier arranged a loan (the "Credit Agreement") with a lender – "H" – for the £10,999 balance of the purchase price. This was repayable over 180 months at

£127.07 per month. H subsequently assigned the loan to another lender, "O", which has more recently assigned the loan again to the Lender – Tandem Bank Limited.⁴

- In September 2022, through PR, Mrs S complained to H, 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 Mrs S sought to hold H liable under Section 75 of the CCA, and matters which were alleged to have rendered the credit relationship between her and H unfair under Section 140A of the CCA.

H forwarded the complaint to O, which 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.

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

The legal and regulatory context

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

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

What I've provisionally decided – and why

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

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

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

Section 75 of the CCA gives a person who has purchased goods or services with certain kinds of credit, a right to claim against their lender in respect of any breach of contract or misrepresentation on the part of the supplier of those goods or services. This is subject to certain technical conditions being met, which I am satisfied have been met in this case. I note that ordinarily it would be the original lender which would be responsible for meeting a claim under Section 75 relating to alleged misrepresentations at the Time of Sale. Based on

⁴ This is my understanding based on information supplied more generally by Tandem Bank Limited, and having considered Tandem Bank, H and O's annual accounts.

what the Lender has told the Financial Ombudsman Service, I think it accepts responsibility for such claims, but in this case it is a matter of no practical significance given I do not think the complaint should be upheld.

Section 140A of the CCA operates in a more complex manner. Insofar as is relevant to Mrs S'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 75 - Misrepresentations	Reason why this complaint doesn't succeed
It was falsely represented that the product was an investment that would "considerably appreciate in value".	There's insufficient persuasive evidence this was said. If it was said, it would not be untrue to describe the product as an investment as it contained investment features. Any statements regarding future value are likely to have been statements of honest opinion in the absence of evidence to show otherwise.
It was falsely represented that there would be a considerable return on investment because the purchase involved a share in a property that would increase in value.	As per the point above, there is insufficient persuasive evidence these representations were made. If they were, there's insufficient evidence they were anything other than statements of honest opinion.
It was falsely represented that the Signature variation of 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. Mrs S also signed to say she understood the Supplier would not buy back the membership.
It was falsely represented that Mrs S would have access to "the holiday apartment" at any time all year round.	This is a vague allegation which also lacks sufficient detail, context or colour to demonstrate the Supplier made such statements. Mrs S had access to the Allocated Property in a specific week of the year if she chose to exercise the right to do so. This was a key feature of the Signature membership.
Matters allegedly rendering the credit relationship unfair	Reason why this complaint doesn't succeed

Mrs S was pressured into making the purchase.	There is little evidence of what specifically the Supplier said or did which meant Mrs S felt she had no choice but to purchase. Mrs S 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.
The Lender failed to carry out the creditworthiness/affordability checks required by industry guidance or regulations.	Mrs S has not provided evidence that the loan was actually unaffordable, which would need to be shown if the complaint were to succeed on this point.
The Credit Agreement was arranged by self-employed individuals without regulatory permissions, 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 representatives is not relevant.
The Purchase Agreement contained terms which were unfair to Mrs S, including terms allowing the Supplier to repossess the timeshare for minor breaches.	While there are terms within the Purchase Agreement which could be operated in an unfair way, no evidence has been provided that the terms have been operated in this way in practice, or likely will be in future, in Mrs S's case.
The Supplier marketed and sold the membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations.	While it's possible the Supplier marketed the product in this way, it would need to have played a material part in Mrs S's decision to buy the Signature variation of the Fractional Club membership, to render the credit relationship between her and the Lender unfair. See further details below.

I'll now set out the expanded reasons for my decision relating to the alleged sale of the membership to Mrs S as an investment.

Given what is known about the way in which the Supplier sold Fractional Club memberships, I think it's possible the sales representatives could have said or suggested to Mrs S that the Signature variation was an investment which could lead to a financial gain or profit, and therefore have acted in contravention of the relevant prohibition in the Timeshare Regulations.

However, it's necessary to show that any such breach by the Supplier had a material impact on Mrs S's decision to go ahead with her purchase, to be able to arrive at a conclusion that the credit relationship between Mrs S and the Lender was rendered unfair to her as a result. In this case, the evidence is not persuasive, for reasons I'll explain.

Up until relatively recently, the Financial Ombudsman Service had received no evidence from Mrs S, in her own words, in relation to any aspect of her complaint. All we had to consider was the letter of complaint from PR, which was identical in nearly all respects to other letters of complaint I have seen from PR on behalf of other complainants. In other words, it was generic in nature.

It was only after the Investigator issued an unfavourable assessment of the merits of the complaint, and after the judgment in *R (on the application of Shawbrook Bank Ltd) v*

Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) (*Shawbrook & BPF v FOS*) was handed down, that we received a witness statement from Mrs S. In this, Mrs S recalled that the Supplier led her to believe that one of the memberships she purchased offered her the prospect of a financial gain. Experience tells me that, the more time that passes between a complaint and the event complained about, the more risk there is of recollections being vague, inaccurate and/or influenced by discussion with others. In light of this, I find it difficult to understand why the Financial Ombudsman Service was only given such evidence when it was, and I can attach only very limited weight to these recollections given what I consider to be the very real risk they have been coloured by the judgment in *Shawbrook & BPF v FOS*.

I'd also observe that in her witness statement, Mrs S appears to allege only that the Supplier marketed or sold the *original* Fractional Club membership to her as an investment, and not the Signature variation which this complaint relates to. Based on what Mrs S has said, the Supplier presented the Signature variation as a kind of solution to concerns she had over holiday availability and booking problems with her existing membership. So I'm not convinced, even if I could put much weight on what Mrs S has said, that the prospect of the Signature variation leading to a financial gain for her in the future, was material to her decision to go ahead.

It follows that I'm not persuaded I can conclude the credit relationship in question was unfair to Mrs S for reasons relating to a breach of the relevant prohibition.

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 Mrs S'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