

The complaint

Mr C and Mrs W complain Shawbrook Bank Limited (the “Lender”) has failed to honour claims under Section 75 of the Consumer Credit Act 1974 (the “CCA”) and has participated in unfair credit relationships with them under Section 140A of the CCA.

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

What happened

I issued a provisional decision on this complaint on 18 December 2025 in which I set out the background to the matter and my provisional findings on it. I also indicated there were parts of the complaint the Financial Ombudsman Service didn’t have the power to look into. A copy of that provisional decision is appended to and forms part of this final decision, so it’s not necessary for me to go over all the details again. But to summarise briefly:

- Mr C and Mrs W bought two timeshares from a timeshare provider (the “Supplier”) on 5 December 2012 (“Purchase Agreement 1”) and 12 June 2013 (“Purchase Agreement 2”) for £45,709 and £50,554 respectively. Due to trade-ins of existing timeshares, the balance to pay for each purchase was £13,196 and £7,686 respectively, both financed by loans with the Lender (“Credit Agreement 1” and “Credit Agreement 2”). The second purchase essentially replaced the first one.
- The timeshares were a type of asset-backed timeshare which entitled Mr C and Mrs W to more than holiday rights. It also entitled them to a share in the proceeds of a property named on their purchase agreements (the “Allocated Property”) after their contracts came to an end.
- Mr C and Mrs W later complained, via a professional representative (“PR”), to the Lender about misrepresentations and breaches of contract by the Supplier giving them claims against the Lender under Section 75 of the CCA.
- The Lender rejected the complaint and it was then referred to the Financial Ombudsman Service for an independent assessment. Some years later, while the complaint was with the Financial Ombudsman Service, PR sought to add another ground for complaint – that the Lender had been party to an unfair credit relationship with Mr C and Mrs W within the meaning of Section 140A of the CCA, in respect of both credit agreements.

In my provisional decision I arrived at the following conclusions, the reasons for which are explained in full in the appended document:

In relation to Purchase Agreement 1 and Credit Agreement 1

1. That Mr C and Mrs W’s complaint that the credit relationship between them and the Lender was unfair to them, was not one the Financial Ombudsman Service has the

jurisdiction to consider, because it had been brought too late.

2. That the rest of the complaint was not brought too late, but the Lender's decision not to uphold it was not unfair or unreasonable. This is because the purchase was not protected by Section 75 of the CCA due to the price of the timeshare involved (over £30,000).

In relation to Purchase Agreement 2 and Credit Agreement 2

1. The Lender's decision not to uphold this complaint was not unfair or unreasonable. This is because the purchase was not protected by Section 75 of the CCA due to the price of the timeshare involved (again, over £30,000), and there was insufficient persuasive evidence to support the allegation that the Lender participated in an unfair credit relationship with Mr C and Mrs W. A key reason for this was a lack of any direct testimony from Mr C or Mrs W.

I asked the parties to the complaint to let me have any further submissions they wanted me to consider. The Lender said it accepted the provisional decision. PR, on behalf of Mr C and Mrs W, did not respond. The case has now been returned to me to decide.

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.

Because neither party to the complaint has provided any further arguments, evidence or other submissions for me to consider, I see no reason to depart from the conclusions I reached in my appended provisional decision.

It follows my conclusions are (for the same reasons given in the appended provisional decision):

1. That Mr C and Mrs W's complaint that the credit relationship between them and the Lender under Credit Agreement 1 was unfair to them, is not one the Financial Ombudsman Service has the jurisdiction to consider, because it has been brought too late.¹
2. That Mr C and Mrs W's complaint that the Lender failed to deal in a fair way with their Section 75 in relation to both Credit Agreement 1 and Credit Agreement 2, should not be upheld.
3. That Mr C and Mrs W's complaint that the credit relationship between them and the Lender under Credit Agreement 2 was unfair to them, should not be upheld.

My final decision

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

¹ Findings regarding the Financial Ombudsman Service's jurisdiction are not properly a matter for a final decision, but I set out this conclusion as an explanation of why I've not considered the merits of this part of Mr C and Mrs W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs W to accept or reject my decision before 24 February 2026.

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

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at the same overall conclusion as our most recent Investigator, however I think that a part of the complaint is outside of the Financial Ombudsman Service's jurisdiction, so I'm issuing this provisional decision to explain why.

The deadline for both parties to provide any further comments or evidence for me to consider is **5 January 2026**. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from Mr C and Mrs W, 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 C and Mrs W complain Shawbrook Bank Limited (the "Lender") has failed to honour claims under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in unfair credit relationships with them under Section 140A of the CCA.

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

What happened

This complaint relates to two timeshare purchases made by Mr C and Mrs W from a timeshare provider (the "Supplier") on 5 December 2012 and 12 June 2013. Prior to this, Mr C and Mrs W had been members of a different timeshare club operated by the Supplier, which I'll call the "Vacation Club". I've outlined the basic details below:

- The purchase made on 5 December 2012 was of a membership in the Supplier's "Fractional Club". Mr C and Mrs W bought 2,988 points in the Fractional Club, which could be used to book holiday accommodation annually ("Purchase Agreement 1"). This type of timeshare was also asset-backed, meaning it included a share in the future sale proceeds of a specific timeshare apartment named on Mr C and Mrs W's purchase paperwork (the "Allocated Property"). The purchase cost £45,709, but the balance Mr C and Mrs W had to pay was reduced to £13,196 after trading in their previous Vacation Club membership.
- The Supplier arranged a loan ("Credit Agreement 1") with the Lender for the £13,196 balance of the purchase price. This was repayable over 180 months at £206.84 per month. The loan was settled early, on 11 March 2013.
- The purchase made on 12 June 2013 was of another membership in the Supplier's Fractional Club. This time Mr C and Mrs W bought 3,462 points in the Fractional Club, swapping their previous Fractional Club membership for the new one ("Purchase Agreement 2"). Like the previous membership, this was an asset-backed timeshare. The second purchase cost £50,554, and this time the balance Mr C and Mrs W had to pay was reduced to £7,686 after trading in their previous Fractional Club membership.
- This second purchase was also funded by a loan with the Lender for the £7,686 balance of the purchase price ("Credit Agreement 2"). It was repayable over 180

months at £120.47 per month, and was settled on 19 August 2021.

- In October 2018, through PR, Mr C and Mrs W complained to the Lender, seeking to find it responsible under Section 75 of the CCA for certain misrepresentations and breaches of contract committed by the Supplier. These were (summarised):
 - Mr C and Mrs W had been told the only way out of their Vacation Club membership was to swap it for Fractional Club membership, but this hadn't been true.
 - Mr C and Mrs W had been falsely told they had an option to sell the Fractional Club membership in 19 years' time and get a return on their money.
 - That similar false statements had been made in respect of Purchase Agreement 2, where the Supplier said that buying more fractional points would mean their membership would be easier to sell on.
 - The Supplier had breached the contract by advertising accommodation to non-members on booking websites, causing the availability of holidays for members to be unsatisfactory.

- The Lender rejected the complaint, which was then referred to the Financial Ombudsman Service. There were delays in us being able to look into the matter. One of our Investigators then considered the complaint, but didn't think it should be upheld. PR appealed our Investigator's assessment and then referred us to a further letter of complaint it had sent to the Lender on 8 March 2024, which it wanted us to consider as part of the present complaint. In this letter PR said it was making a complaint under Section 140A of the CCA on behalf of Mr C and Mrs W. In the letter, it argued:
 - The Supplier had sold the Fractional Club memberships as investments which would make Mr C and Mrs W a profit, in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resales and Exchange Contracts Regulations 2010 (the "Timeshare Regulations").
 - The Purchase Agreements contained unfair terms which allowed the Supplier to confiscate the memberships if Mr C or Mrs W didn't make their loan repayments.

- Another Investigator then looked into the case, but he wasn't persuaded by PR's new arguments, issuing his own assessment that the complaint ought not to be upheld. PR again appealed, asking for the case to be considered by an Ombudsman. In its letter to support its appeal, PR argued:
 - Our Investigator's assessment was inconsistent with assessments on other cases which had near-identical facts, which had been upheld.
 - Our Investigator had both discounted Mr C and Mrs W's personal statements or testimony, and/or had not given them an opportunity to provide such evidence to support their case.
 - Narrative evidence had been dismissed.
 - There had been a lack of disclosure of the unfair terms referred to in its March 2024 letter.

The case has now been passed 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 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. But I would add that the following regulatory rules/guidance are also relevant:

The Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

What I've provisionally decided – and why

I have considered all the available evidence and arguments to decide:

1. Whether the complaint (and to what extent) falls within the jurisdiction of the Financial Ombudsman Service; and (if relevant)
2. What's fair and reasonable in all the circumstances of the complaint, for any parts of the complaint our jurisdiction permits me to consider.

Having considered all the available evidence and arguments, my provisional conclusions are:

In relation to Purchase Agreement 1 and Credit Agreement 1

1. That Mr C and Mrs W's complaint that the credit relationship between them and the Lender was unfair to them, is not one the Financial Ombudsman Service has the jurisdiction to consider, because it has been brought too late.
2. That the rest of the complaint was not brought too late, but the Lender's decision not to uphold it was not unfair or unreasonable. This is because the purchase was not protected by Section 75 of the CCA due to the price of the timeshare involved.

In relation to Purchase Agreement 2 and Credit Agreement 2

1. The Lender's decision not to uphold this complaint was not unfair or unreasonable. This is because the purchase was not protected by Section 75 of the CCA due to the price of the timeshare involved, and insufficient persuasive evidence to support the allegation that the Lender participated in an unfair credit relationship with Mr C and Mrs W.

I'll now explain why.

My provisional findings on our jurisdiction to consider the complaint about Purchase Agreement 1 and Credit Agreement 1

The rules which outline the complaints the Financial Ombudsman Service has jurisdiction to consider are set out in the Financial Conduct Authority's Handbook, under the chapter named DISP, and these rules are therefore usually known as the "DISP rules".

DISP 2.8.2 R contains rules about how long a complainant has to bring a complaint. The relevant part of the rules says the following:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

...

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably

to have become aware) that he had cause for complaint;

Unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received; unless

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R...was as a result of exceptional circumstances; or

...

(5) the respondent has consented to the Ombudsman considering the complaint where the time limits...have expired..."

In short, this means that in order for me to be able to consider Mr C and Mrs W's complaint, they need to have made their complaint within six years of the event which the complaint relates to or, if this gives them longer, within three years of when they became aware (or ought reasonably to have been aware) of their cause to complain, unless there are exceptional circumstances which prevented them from bringing their complaint earlier or the Lender has consented to the complaint being brought late (which it hasn't in this case).

In order to determine whether or not a complaint has been brought inside the relevant time limits, it's necessary to define the "event" the complaint relates to. As far as Mr C and Mrs

W's complaint about the Lender's failure to honour their Section 75 claim is concerned, the event is the Lender's decision to decline the claim. This decision was communicated to them (via PR) on 9 September 2019, and their complaint was referred to the Financial Ombudsman Service about four months after this. So, I'm satisfied that this part of the complaint was made "in time" and, as I've not seen any other reason that it would fall outside of our jurisdiction, I will go on to consider its merits later in this provisional decision.

Mr C and Mrs W's complaint about the Lender's participation in a credit relationship that was unfair to them under Section 140A of the CCA, requires a slightly different analysis. It's now well established in the courts that a determination of whether or not a credit relationship complained of is unfair has to be made "*having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination*" – which is the date of the trial in the case of an existing credit relationship, or otherwise the date the credit relationship ended.

In practical terms, this means the event for the purposes of DISP 2.8.2 R was Mr C and Mrs W's credit relationship with the Lender which was alleged to have been unfair, and this event was a continuous one which came to an end on 11 March 2013 when they settled the loan in question. The six-year time limit would therefore begin to run from that point.

While PR did bring a complaint on behalf of Mr C and Mrs W within six years of 11 March 2013, this was not a complaint about an unfair credit relationship within the meaning of Section 140A of the CCA. I think it's quite clear that the original complaint made by PR was in relation to a claim under Section 75 of the CCA only. There is no mention of Section 140A of the CCA in the complaint at all.

It was only on 8 March 2024 that PR first wrote to the Lender alleging that it had participated in a credit relationship with Mr C and Mrs W that was unfair to them. This was more than six years after 11 March 2013 and so their complaint in respect of this was made too late under the six-year limb of DISP 2.8.2 R.

That leaves the three-year limb of the rule, which could, in theory, give Mr C and Mrs W more time to make their complaint.

The question which must be answered is whether Mr C and Mrs W complained within three years of when they became aware, or ought reasonably to have been aware, that they had cause to complain about the potential unfairness of their credit relationship with the Lender. I will say here that the matters which could give rise to an unfair credit relationship are potentially very broad, and Mr C and Mrs W only need to have been aware of one reason for the relationship to have potentially been unfair (or been in a position where they ought reasonably to have been aware of one reason) for the three-year clock to start. They wouldn't get a further three years if they later discovered another reason why the credit relationship may have been unfair.

Mr C and Mrs W also don't need to have had actual, exact knowledge of their cause to complain to the Lender, to start the three-year clock running. They just need to have had constructive knowledge. What this means is that they need to have had sufficient information to be put on the path of discovering that the Lender had been responsible for something that had, or might have, gone wrong and caused them a loss. Bearing this in mind, to start the three-year clock, I think Mr C and Mrs W should reasonably have been aware, or been put on the path to discovering, that:

1. There was a problem with the lending or the timeshare.
2. The problem had caused them, or was causing them, a loss.
3. Someone else may have been responsible for this loss, through their actions or

failure to act.

4. This someone else may have been the Lender.

Having carefully read Mr C and Mrs W's complaint, I think they ought reasonably to have been aware that they had cause to complain to the Lender about a potentially unfair credit relationship by latest October 2018. This was when they first complained to the Lender about something which could have given rise to such a claim – namely the Supplier having improperly sold the timeshares to them as investments and having made misrepresentations to them to induce them into their purchases. It's clear that they considered the timeshares had been mis-sold by this point, and they had been exploring with third party claims managers such as PR, what claims they might have against the Lender. I think that is plainly a scenario which starts the clock running, as far as the three-year limb of DISP 2.8.2 R is concerned.

And with that being the case, I think Mr C and Mrs W ought reasonably to have been aware that they had cause to complain about the Lender participating in a potentially unfair credit relationship with them by October 2018, which was more than three years before they complained about this in March 2024. And so I don't think the three-year limb of DISP 2.8.2 R gives them any longer to have made the complaint than the six-year limb.

In light of the above, I am minded to conclude that Mr C and Mrs W had six years from 11 March 2013 to make their complaint to the Lender about the alleged unfair credit relationship, for it to have been made in time for the purposes of the Financial Ombudsman Service's rules. The complaint was not made within that period of time, and so I must conclude that we do not have the power to consider the complaint about this, unless exceptional circumstances preventing them from bringing the complaint in time. Nothing which would constitute exceptional circumstances appears within the evidence in this complaint, so I'm currently of the view that Mr C and Mrs W were not prevented from making their complaint in time as a result of exceptional circumstances.

It follows that I'm minded to decide that Mr C and Mrs W's complaint that their credit relationship with the Lender was unfair to them with respect to Credit Agreement 1 is not a complaint the Financial Ombudsman Service can consider.

My provisional findings on our jurisdiction to consider the complaint about Purchase Agreement 2 and Credit Agreement 2

Regarding the complaint about the Section 75 claim, the position is exactly the same as it was for Purchase Agreement 1 and Credit Agreement 1, and I'll go on to consider the merits of that part of the complaint accordingly.

In respect of the allegation that the Lender participated in an unfair credit relationship with Mr C and Mrs W in relation to Credit Agreement 2, I think this part of the complaint was not brought too late, and that's for the simple reason that Credit Agreement 2 was not settled until August 2021 – this being the end of that credit relationship – and the complaint in March 2024 was brought within six years of that date.

I'll now go on to consider the merits of the parts of the complaint which I've found the Financial Ombudsman Service has the jurisdiction to consider.

The Section 75 Complaints in respect of both Purchase and Credit Agreements

Section 75 of the CCA gives a borrower who has paid for goods or services with certain kinds of credit (such as the loan with the Lender) the right to make a "like claim" against the creditor in respect of any breach of contract or misrepresentation by the supplier of those

goods or services, so long as certain conditions are met.

One of the conditions which needs to be met for Section 75 protection to apply to a purchase, is that the cash price of the item purchased needs to be more than £100 but no more than £30,000.

For both Purchase Agreements, the price of the timeshare was more than £30,000, prior to trade-in of any prior products. And it's the pre trade-in price which matters, because that was the stated price of the product being purchased on the day. The conclusion I must reach therefore, is that Section 75 didn't apply to either purchase and so it was not unfair or unreasonable for the Lender to decline the claims.

Section 75A of the CCA also provides some protection to consumers in claims involving higher value items purchased using loans like the ones Mr C and Mrs W took to pay for their Purchase Agreements. While PR didn't specifically reference Section 75A, I've considered it for the sake of completeness. Notably, Section 75A only covers breaches of contract and requires evidence that "*the debtor has taken reasonable steps to pursue his claim against the supplier but has not obtained satisfaction for his claim*". It's unclear what, if any, attempts Mr C and Mrs W have made to resolve their dissatisfaction with the Supplier directly.

Furthermore, the only part of their complaint which I can see relates to an allegation that the Supplier was in breach of contract, is where they say the availability of holidays has been poor because the Supplier has been advertising accommodation for sale to the general public. No specifics are given as to what holidays or accommodation Mr C and Mrs W tried to book but were unable to obtain, and with such a lack of supporting detail it's not possible to conclude that the Supplier must have been in breach of one or both of the Purchase Agreements. Regarding the Supplier's alleged advertising of its accommodation on booking websites, it's unclear to me that this would be a breach of contract. The contemporaneous documents I've seen relating to the memberships do not say that the resorts in the Supplier's portfolio were exclusive to members. Resorts owned by the Supplier were described as "mixed use", while other resorts were described as resorts in which the Supplier had "secured accommodation...under its control" or which were "available through [our] partnerships with other resorts". None of this appears to state or imply that the resorts within the portfolio could only be booked by members.

In light of the above, I don't think Section 75A would have assisted Mr C and Mrs W either.

The Section 140A complaint in relation to Purchase and Credit Agreement 2

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

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

As part of my consideration of the matter of Mr C and Mrs W's claim that there has been an unfair credit relationship, I've thought about, amongst other things, the commission arrangements between the Lender and the Supplier, and the disclosure of those arrangements to Mr C and Mrs W. I've also thought about any existing unfairness from a related credit agreement, where one exists or existed.

Unfair Terms

One of the arguments pursued by PR in more recent correspondence is that Mr C and Mrs W were not informed of an unfair term, or set of terms, which meant that if they failed to make their loan repayments, their Fractional Club membership would be confiscated. This, they suggest, renders the credit relationship between Mr C and Mrs W, unfair to them.

I think PR is mistaken here. The terms they refer to don't appear to exist in either the Purchase Agreement or the Credit Agreement. I can find nothing to suggest that their Fractional Club membership would be confiscated or forfeited if they had failed to keep up with their loan repayments. The agreements are separate.

It may be that PR is confusing terms within the Purchase Agreement which indicate the Supplier would or could repossess the membership in the event Mr C and Mrs W failed to make annual management or maintenance fee payments to the Supplier. I can see how such a term or set of terms could be operated in an unfair way and potentially lead to unfairness in the related Credit Agreement. However, Mr C and Mrs W haven't provided any evidence which leads me to believe the terms PR *may* be referring to, have led to any significant harm or unfairness to them arising *in practice*.

The alleged sale of the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations

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

However, even if any such breach by the Supplier had occurred at the time of sale in June 2013, I would need to be able to conclude it had a material impact on Mr C and Mrs W's decision to go ahead with their purchase, to be able to arrive at a conclusion that the credit relationship between them and the Lender was rendered unfair to them as a result. In this case, the evidence is not persuasive, for reasons I'll explain.

The allegations made about the Supplier's sale of the product, relate to what did or did not happen on 13 June 2013, the day Mr C and Mrs W bought the second Fractional Club membership. They relate to what was or was not said by the Supplier at that time, and what Mr C and Mrs W's state of mind was when making their purchasing decision.

It seems relatively obvious to me that the recollections of those present at the time (where available) would be key evidence given the nature of the allegations. But one thing which has been lacking throughout this complaint since it was first made in 2018, is any direct testimony from Mr C or Mrs W. We have seen no witness statement or other comment from them as to what happened on 13 June 2013.

PR's claim that our Investigators have either ignored direct testimony from Mr C and Mrs W, or not given an opportunity to provide that kind of evidence, is simply inaccurate and I was disappointed to see such a claim being made. As I've already said, no direct testimony has been provided at any stage. Our first Investigator asked PR whether such evidence existed and, if it did, to provide it. PR did not respond to that communication. In response to PR's appeal letter, which said that Mr C and Mrs W were standing ready to provide further evidence, our second Investigator invited this further evidence from Mr C and Mrs W. That

was three months ago. To the best of my knowledge, we've received no communication from PR or Mr C or Mrs W since then.

I acknowledge PR has said that its own letters of complaint were based on meetings in which Mr C and Mrs W recounted their memories of the relevant events, and so they present a reliable narrative of what happened. But the letters of complaint, in my view, are not a substitute for direct testimony from Mr C and Mrs W. The letters make what are, in essence, bare assertions not supported by evidence from Mr C, Mrs W or other contemporaneous sources.

I also acknowledge another point by PR which essentially is that the factual circumstances of Mr C and Mrs W's purchases means that they must have bought the Fractional Club memberships because they were motivated by the prospect of them being investments. PR points to Mr C and Mrs W already having holiday rights under the Vacation Club and not acquiring new rights when switching to the Fractional Club. PR argues that the key selling points for them therefore must have been the fact that Fractional Club membership came with a shorter term than Vacation Club membership, and the prospect of it being an investment at the end of that shorter term.

I note that Mr C and Mrs W did receive additional holiday rights, in the form of 474 additional points, when they made their June 2013 purchase. The Lender also claims that the Supplier's notes made on the day indicated Mr C and Mrs W had wanted more points, and this was why they purchased on that occasion. Given I have not seen the notes in question, I don't think there's a lot of weight I can attach to that, but it demonstrates that the Supplier has a dissenting opinion on what may have motivated Mr C and Mrs W at the time of sale in June 2013.

And again, we are lacking Mr C or Mrs W's voice in this, in the form of any recollections from them. Without that, what PR says is rather speculative, and it's not a proper basis on which I could make a finding that:

- A) The Supplier sold or marketed the Fractional Club membership on 13 June 2013 to Mr C and Mrs W as an investment, in breach of the Timeshare Regulations; and
- B) That Mr C and Mrs W's purchasing decision on that day was materially motivated by the Supplier's breach of the regulations.

In light of the above, given the facts and circumstances of this complaint, I am not persuaded that the Lender was party to a credit relationship with Mr C and Mrs W under Credit Agreement 2 that was unfair to them for the purposes of Section 140A of the CCA.

My provisional decision

For the reasons explained above, my provisional decision is that:

1. That Mr C and Mrs W's complaint that the credit relationship between them and the Lender under Credit Agreement 1 was unfair to them, is not one the Financial Ombudsman Service has the jurisdiction to consider, because it has been brought too late.
2. That Mr C and Mrs W's complaint that the Lender failed to deal in a fair way with their Section 75 in relation to both Credit Agreement 1 and Credit Agreement 2, should not be upheld.

3. That Mr C and Mrs W's complaint that the credit relationship between them and the Lender under Credit Agreement 2 was unfair to them, should not be upheld.

Will Culley
Ombudsman