DRN-6090963

The complaint

Ms C and Mr C complain Shawbrook Bank Limited (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with them under Section 140A of the CCA.

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

What happened

I issued a provisional decision on Ms C and Mr C's complaint on 4 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:

- Ms C and Mr C entered an agreement to buy a fractional timeshare (the "Purchase Agreement") from a timeshare provider (the "Supplier") on 18 October 2018 (the "Time of Sale"), for £24,049, with £6,369 to pay after the trade-in of a previous fractional timeshare. The balance was financed by a loan of the same amount from the Lender (the "Credit Agreement").

- The timeshare was a type of asset-backed timeshare known as the "Fractional Club" which entitled Ms C and Mr C to more than holiday rights. It also entitled them to a share in the proceeds of a property named on their purchase agreement (the "Allocated Property") after their contract came to an end.

- Ms C and Mr C later complained, via a professional representative ("PR"), to the Lender about a number of concerns which included misrepresentations by the Supplier giving them a claim against the Lender under Section 75 of the CCA, and matters giving rise to an unfair credit relationship between them and the Lender.

- The Lender rejected the complaint and it was then referred to the Financial Ombudsman Service for an independent assessment.

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

- The Lender had not been unfair or unreasonable in declining Ms C and Mr C's Section 75 claim for misrepresentation because:

    - Some of the alleged misrepresentations were in fact true statements or statements of opinion which there was no evidence to demonstrate were not honestly held.

    - 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 Ms C and Mr C.

- The Lender had not participated in a credit relationship with Ms C and Mr C that was unfair to them because:
    - Regardless of whether the Lender had carried out appropriate checks before lending to Ms C and Mr C, there was a lack of evidence the loan had been unaffordable for them at the time.
    - The Credit Agreement had not been arranged by an unauthorised credit broker.
    - There was insufficient persuasive evidence that Ms C and Mr C had only signed up for the timeshare because their ability to make a choice had been significantly impaired by pressure from the Supplier.
    - While unfair terms within the Purchase Agreement had been referred to by PR, I couldn't see that these terms had been operated in an unfair way with respect to Ms C and Mr C or that it was likely they would be in the future.
    - It was *possible* the Supplier had breached Regulation 14(3) of the Timeshare Regulations by marketing the timeshare to Ms C and Mr C as an investment, but I didn't think it was probable. I thought Ms C and Mr C's own testimony regarding the sale of the timeshare was unpersuasive. They did not say in their witness statement, when recounting the Time of Sale, that the Supplier had marketed the product to them as an investment. When speaking generally about their experiences with the Supplier they did reference the Supplier having sold products to them as investments but, taking their statement as a whole and the more specific comments they'd made about the Time of Sale, this later comment felt like an afterthought. I noted some of Ms C and Mr C's actions were also inconsistent with them being motivated to make their purchase because they thought the timeshare was an investment. This meant it was difficult to conclude that, if any improper marketing by the Supplier in breach of Regulation 14(3) had occurred, it had led them to into the purchase and caused unfairness in their credit relationship with the Lender. Finally, I noted there were some questions over the provenance of the witness statement which could undermine its credibility.

I invited the parties to the complaint to respond to my provisional decision. The Lender accepted the provisional decision. PR didn't agree with the provisional decision, and asked me to consider various additional points relating to the alleged sale of the timeshare as an investment, 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.

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 Ms C and Mr C and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to Ms C and Mr C as an investment at the Time of Sale, and the impact of this on their purchasing decision. 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 disagrees with my assessment of Ms C and Mr C's witness statement. I could summarise its arguments as follows:

- Regarding allegations which had been made that the witness statement was of dubious provenance, with certain metadata indicating it had been created or edited shortly before it was sent to the Financial Ombudsman Service, PR said it was unable to comment on the technicalities but that some files showed a "date created" that corresponded to when they were saved in its clients folders.

- The fact that Ms C and Mr C had mentioned in their witness statement, the benefit to be gained from the sale of the Allocated Property, meant this was an important factor in both their decision making and the sales process. It was also well known that the Supplier sold and marketed fractional timeshares as investments.

I don't think PR's comments address my analysis of Ms C and Mr C's testimony in my provisional decision. This is what I said:

> *"Ms C and Mr C's statement recounts their experiences with the Supplier across the four purchases that they made. When recounting this particular purchase, they go into a fair amount of detail, even going as far as to provide a physical description of one of the Supplier's representatives. However, they do not mention the Supplier ever having marketed or sold the product to them as an investment. Ms C and Mr C's statement instead focuses on having been shown better accommodation by the Supplier, and of having signed because they had wanted to leave the sales environment.*
>
> *Later in their statement, Ms C and Mr C set out a numbered list of their concerns about their purchases from the Supplier. Notably, none of the points on the list relate to the products being an investment or of the Supplier having marketed or sold them in that way.*
>
> *There is a paragraph towards the end of the statement where Ms C and Mr C do refer to the Supplier having told them on each occasion they made a purchase, that they were buying an investment that would result in the sale of a property at the end of [the] contract and which would lead to a financial gain. But they don't say or suggest this was influential in their decision making process and, taking the statement as a whole, this one small paragraph lacks prominence and feels like something of an afterthought. I do not get the impression that it was something which was of much importance to Ms C and Mr C.*
>
> *Finally, I note that other facts relating to Ms C and Mr C's series of purchases from the Supplier do not support a contention that they made their purchases at the Time of Sale because they were motivated by the prospect of them being an investment. When upgrading to the purchase they made on this occasion, they traded in their existing [fractional] membership for significantly less than they'd paid for it about a year earlier. I've not seen evidence this was something Ms C and Mr C questioned at the time – which might have been expected if a hoped-for investment had lost significant value in a short space of time. Additionally, Ms C and Mr C went on to make a final purchase from the Supplier which involved trading in the Fractional Club membership they'd purchased at the Time of Sale, for a holiday club membership with no investment element. Had Ms C and Mr C been going into their purchases from the Supplier with investment in mind, it would make little sense for them to swap a product containing investment features for one without such features."*

I think those findings remain valid – nothing PR has said persuades me otherwise given it fails to address the points I made. It follows that I think it's unlikely the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale. If I'm wrong about that and it did, then I don't think there's sufficient persuasive evidence that the breach led Ms C and Mr C into the Purchase Agreement, rendering their credit relationship with the Lender unfair to them.

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

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 Ms C and Mr C, nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led Ms C and Mr C 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 Ms C and Mr C.

In 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 Ms C and Mr C entered into wasn't high. At £318.45, it was only 5% of the amount borrowed and even less than that as a proportion of the charge for credit. So, had they 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 they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, they had no obvious means of their own to pay for the timeshare. And at such a low level, the impact of commission on the cost of the credit they needed doesn't strike me as disproportionate. So, I think they would still have taken out the loan to fund their 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 Ms C and Mr C but as the supplier of contractual rights they obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreement and thus a fiduciary duty.

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 Ms C and Mr C.

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 Ms C and Mr C and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. 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 Ms C and Mr C credit relationship with the Lender wasn't unfair to them 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 Ms C and Mr C 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 Ms C and Mr C (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 Ms C and Mr C 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 them. 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 they would still have taken out the loan to fund their 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 Ms C and Mr C to accept or reject my decision before 17 February 2026.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I'm issuing this provisional decision to give the parties to the complaint a further opportunity to make submissions before I make my decision final.

The deadline for both parties to provide any further comments or evidence for me to consider is **18 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 Ms C and Mr C, or if they tell me they accept my provisional decision, I may arrange for the complaint to be closed as resolved without a final decision.

The complaint

Ms C and Mr C complain Shawbrook Bank Limited (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with them under Section 140A of the CCA.

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

What happened

This complaint relates to a timeshare purchase made by Ms C and Mr C from a timeshare provider (the "Supplier") on 18 October 2018. This was the third of four timeshare purchases I'm aware of that Ms C and Mr C made from the Supplier. I've outlined the basic details below:

- The purchase made on 18 October 2018 (the "Time of Sale") was of a membership in the Supplier's "Fractional Club". Ms C and Mr C bought 1,750 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 timeshare apartment named on Ms C and Mr C's purchase paperwork (the "Allocated Property"). The purchase cost £24,049, with a balance of £6,369 to pay after Ms C and Mr C traded in an existing Fractional Club membership they'd bought from the Supplier the year before.

- The Supplier arranged a loan (the "Credit Agreement") with the Lender for the balance of £6,369. This was repayable over 180 months at £73.60 per month.

- In October 2022, through PR, Ms C and Mr C complained to the Lender, seeking to find it responsible for the Supplier having mis-sold the timeshare and associated loan. The individual mis-selling concerns raised by PR can be found in the table below, but broadly-speaking they included misrepresentations for which Ms C and Mr C sought to hold the Lender liable under Section 75 of the CCA, and matters which were alleged to have rendered the credit relationship between them and the Lender unfair under Section 140A of the CCA.

The Lender rejected the complaint, which was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Ms C and Mr C disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. At this stage PR supplied a witness statement, said to have been written by Ms C and Mr C in August 2022, to support their case.

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 Ms C and Mr C seek redress from the Lender in relation to what are, at least in part, the *Supplier's* alleged wrongdoings as opposed to the Lender's. The grounds are that Ms C and Mr C have a claim under Section 75 of the CCA, and Section 140A of the CCA.

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

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

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

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

Table of Summarised Findings

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 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. Ms C and Mr C also signed to say they understood the Supplier would not buy back the membership.
It was falsely represented that Ms C and Mr C would have access to "the holiday apartment" at any time all year round.	This is a vague allegation which also lacks sufficient detail, context or colour to demonstrate the Supplier made such statements.
Matters allegedly rendering the credit relationship unfair	**Reason why this complaint doesn't succeed**
Ms C and Mr C were pressured into making the purchase.	There is little evidence of what specifically the Supplier said or did which meant Ms C and Mr C felt they had no choice but to purchase. Ms C and Mr C also did not use the cooling-off period to cancel the purchase, which I would have expected had they only purchased because they were pressured into doing so.
The Lender failed to carry out the creditworthiness/affordability checks required by industry guidance or regulations.	Ms C and Mr C have not provided evidence that the loan was actually unaffordable, which would need to be shown if the complaint were to succeed on this point.
The Credit Agreement was arranged by self-employed individuals who didn't hold the relevant permissions for credit broking, meaning it was 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 the individuals concerned isn't relevant.
The Purchase Agreement contained terms which were unfair to Ms C and Mr C, 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 Ms C and Mr C'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 Ms C and Mr C's decision to buy the Fractional Club membership, to render the credit relationship between them and the Lender unfair. **See further details below.**

I'll now set out the expanded reasons for my decision relating to the alleged marketing and/or selling of the Fractional Club membership to Ms C and Mr C as an investment.

The Supplier's alleged 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 Ms C and Mr C 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, it's necessary to show that any such breach by the Supplier had a material impact on Ms C and Mr C'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.

Up until relatively recently, the Financial Ombudsman Service had received no evidence from Ms C and Mr C, in their own words, in relation to any aspect of their 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 and I have found it of no assistance in determining what is likely to have happened at the Time of Sale, or Ms C and Mr C's state of mind at the relevant time.

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 Ms C and Mr C.

It's unknown definitively when this statement was first written or whether it has changed over time. PR says it was written in August 2022, and Mr C has stated in an email to PR that he recognises it as a statement he made around then. On the other hand, I'm aware that the Supplier has argued[1] that the statement is of dubious provenance, with certain metadata associated with it indicating that it was created or edited shortly before it was sent to the Financial Ombudsman Service.

If it's the case that the witness statement represents Ms C and Mr C's recollections after *Shawbrook & BPF v FOS*, then I do not think I can attach much, if any, weight to those recollections. And that is because 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. Given the timing, to me there seems to me to be a very real risk that Ms C and Mr C's recollections would have been coloured by the judgment in *Shawbrook & BPF v FOS.*

If it's the case that the witness statement represents Ms C and Mr C's genuine recollections around August 2022, some time before the judgment in *Shawbrook & BPF v FOS*, then I have to say that, in my view, their statement does not make a good case for the Supplier having marketed the Fractional Club membership to them as an investment, or of there

[1] These arguments were submitted by the Supplier in relation to a complaint involving another lender, and which featured the same witness statement.

being any investment motivation in their decision to go ahead with the Purchase Agreement. I'll explain why.

Ms C and Mr C's statement recounts their experiences with the Supplier across the four purchases that they made. When recounting this particular purchase, they go into a fair amount of detail, even going as far as to provide a physical description of one of the Supplier's representatives. However, they do not mention the Supplier ever having marketed or sold the product to them as an investment. Ms C and Mr C's statement instead focuses on having been shown better accommodation by the Supplier, and of having signed because they had wanted to leave the sales environment.

Later in their statement, Ms C and Mr C set out a numbered list of their concerns about their purchases from the Supplier. Notably, none of the points on the list relate to the products being an investment or of the Supplier having marketed or sold them in that way.

There is a paragraph towards the end of the statement where Ms C and Mr C *do* refer to the Supplier having told them on each occasion they made a purchase, that they were buying an investment that would result in the sale of a property at the end of his contract and which would lead to a financial gain. But they don't say or suggest this was influential in their decision making process and, taking the statement as a whole, this one small paragraph lacks prominence and feels like something of an afterthought. I do not get the impression that it was something which was of much importance to Ms C and Mr C.

Finally, I note that other facts relating to Ms C and Mr C's series of purchases from the Supplier do not support a contention that they made their purchases at the Time of Sale because they were motivated by the prospect of them being an investment. When upgrading to the purchase they made on this occasion, they traded in their existing membership for significantly less than they'd paid for it about a year earlier. I've not seen evidence this was something Ms C and Mr C questioned at the time – which might have been expected if a hoped-for investment had lost significant value in a short space of time.[2] Additionally, Ms C and Mr C went on to make a final purchase from the Supplier which involved trading in the Fractional Club membership they'd purchased at the Time of Sale, for a holiday club membership with no investment element. Had Ms C and Mr C been going into their purchases from the Supplier with investment in mind, it would make little sense for them to swap a product containing investment features for one without such features.

In light of the above, I don't think there is persuasive evidence either that the Supplier marketed or sold the Fractional Club membership to Ms C and Mr C as an investment, or that Ms C and Mr C's decision to purchase the Fractional Club membership was motivated by the prospect of the product making them a financial gain. It follows that I am unable to conclude that the credit relationship between them and Lender was rendered unfair to them for this reason.

Conclusion

[2] On the other hand, I also appreciate that because the product was to run for a long time (typically around 19 years), someone who saw it as an investment might take a long-term view of its value and not necessarily be concerned about a short-term drop in how much it was worth.

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

My provisional decision

For the reasons explained above, I do not intend to uphold Ms C and Mr C's complaint.

Will Culley
Ombudsman