

The complaint

Mr E complains Mitsubishi HC Capital UK PLC (the “Lender”) has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the “CCA”) and has participated in an unfair credit relationship with him under Section 140A of the CCA.

Mr E is represented in his complaint by a professional representative (“PR”).

What happened

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

- Mr E entered an agreement to buy a timeshare (the “Purchase Agreement”) from a timeshare provider (the “Supplier”) on 16 September 2015 (the “Time of Sale”), for £15,453, with a balance to pay of £7,523 after the trade-in of part of a previous timeshare. The balance was financed by a loan of £15,803 from the Lender (the “Credit Agreement”), which included the consolidation of debt relating to a previous purchase from the Supplier.
- The timeshare was a type of asset-backed timeshare which entitled Mr E to more than holiday rights. It also entitled him to a share in the proceeds of a property named on his purchase agreement (the “Allocated Property”) after his contract came to an end.
- Mr E later complained, via a professional representative (“PR”), to the Lender about a number of concerns which included misrepresentations by the Supplier giving Mr E a claim against the Lender under Section 75 of the CCA, and matters giving rise to an unfair credit relationship between Mr E 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 Mr E’s Section 75 claim for misrepresentation because such a claim was time-barred under the Limitation Act 1980, giving the Lender a complete defence to it. That said, the alleged misrepresentations were still relevant to an assessment of the fairness of the credit relationship, so I went on to consider them in that context. I did not think they rendered the credit relationship between Mr E and the Lender unfair to him 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 Mr E.
- The Lender had not participated in a credit relationship with Mr E that was unfair to him for any of the other reasons advanced by PR because:
 - Regardless of whether the Lender had carried out appropriate checks before lending to Mr E, there was a lack of evidence the loan had been unaffordable for him at the time.
 - I accepted that the entity named on the Credit Agreement as the credit intermediary (broker) did not appear to hold the necessary regulatory permissions to arrange loans. However, given Mr E was aware of the key details of the loan, and the loan wasn't unaffordable for him, I couldn't see how this failing had led to a financial loss for Mr E, such that I could say the credit relationship had been unfair to him.
 - I did not think Mr E's ability to exercise a choice to purchase the timeshare had been significantly impaired by pressure from the Supplier. I noted that Mr E had been given a cooling off period to cancel the purchase, which he had not used.
 - It was *possible* the Supplier had breached Regulation 14(3) of the Timeshare Regulations by marketing the timeshare to Mr E as an investment, but I didn't think it was probable or that, if a breach by the Supplier of Regulation 14(3) had occurred, that it had led Mr E into the Purchase Agreement and rendered his credit relationship with the Lender unfair to him.

This was for the main reason that Mr E, in his witness statement, didn't describe the Supplier as having marketed or sold the product in that way, nor did I think the way he had described the product suggest he viewed it as an investment – in particular there was no sign of a hope or expectation of a financial gain or profit.

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 Mr E and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to Mr E 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 disagrees with my interpretation of Mr E's witness statement. I could summarise its points as follows:

- While Mr E may not have used the words "profit" or "investment", there was clearly an underlying expectation of a financial return. It was unreasonable to expect ordinary consumers to use technical financial terms when articulating themselves.
- In particular, it could be inferred from Mr E's worries about the Allocated Property not being sold in his lifetime, that a financial benefit from the sale was something he expected and which was important to him.
- Given Mr E was acquiring an interest in a property, in a touristic area, there would be a natural expectation of an appreciation in value, and it would be reasonable to infer that Mr E shared this view.

PR also argued that promoting the benefit of the return from the sale of the Allocated Property was an important part of the Supplier's sales pitch, exemplified by the fact the Supplier drew attention on a pricing sheet dating to the Time of Sale, to the actual percentage Mr E had acquired in the Allocated Property.

I've thought carefully about what PR has said, but I don't think its interpretation of Mr E's witness statement is reasonable in comparison with what I set out in my provisional decision. PR is asking me to draw inferences where I don't think the evidence supports such inferences being made safely.

This is what Mr E says in the part of his witness statement that speaks about the Allocated Property:

"One of the biggest problems that as arisen to us (we are both 70 years old and in poor health) is the fact that they said it would be sold at a certain time in the future. It now seems, and appears to us, that the sale is only possible to go ahead if all the owners agree. (This is not likely as they sign up at different times). They can delay the sale for two years and it seems that they can go on doing this and delay the sale indefinitely so the sale might not go ahead in our lifetime and we would never see our timeshare sold."

In my view, it is a fundamental problem for Mr E's case that he does not say that he recalls the Supplier having marketed or sold the timeshare to him at the Time of Sale as an investment, or as a product from which he could make a financial gain in the sense of making a profit (which were the key components of the agreed definition of "investment" in the case of *Shawbrook & BPF v FOS*¹). Mr E only says that the Supplier informed him the Allocated Property would be sold at a certain time in the future, and his concern is that this won't happen. He doesn't say that the Supplier said or suggested his share in the Allocated Property was an investment, or that it was likely he would get back more than he put in when it was sold, that the property would rise in value, or anything like that. PR says that an ordinary consumer shouldn't be expected to use language such as "investment" or "profit", but these words are in common parlance, so I don't find that point persuasive.

It's apparent that Mr E was anxious that the Allocated Property should be sold in his lifetime, but the obvious inference to be drawn is not necessarily that it was because he hoped or expected to see a *profit* from the sale. For example, some timeshare owners are concerned

¹ *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('*Shawbrook & BPF v FOS*').

about being responsible for annual maintenance fees longer than they expected, passing on a potential liability to their heirs, or simply the prospect of getting some money back (not necessarily a profit). It's not possible to discern Mr E's thoughts in relation to this because he doesn't say what they were, and I don't think it's reasonable to draw the inferences PR has invited me to draw, given the lack of persuasive evidence.

This means that the conclusions I've drawn are the same as those I drew in my appended provisional decision. While what is known of the Supplier's sales practices means it was *possible* that it could have breached Regulation 14(3) at the Time of Sale, I think the balance of evidence suggests it's unlikely that it did so on this occasion. And, even if it did, I don't think there's enough evidence to be able to conclude this was a material factor in Mr E's decision to enter the Purchase Agreement.

The discrepancies between dates on the Purchase Agreement and Mr E'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 Mr E in the future, as any delay could mean a delay in the realisation of his share in the Allocated Property. PR has supplied an owners' certificate which it says supports its argument here, because it conflicts with the information in the Purchase Agreement.

I've considered the owners' certificate supplied by PR. However, I don't think this certificate relates to the purchase Mr E made at the Time of Sale. It contains the wrong number of "points", references a different product sold by the Supplier, and a different Allocated Property to the one which appears on the Purchase Agreement. I'm aware that when Mr E entered the Purchase Agreement, he traded in only *part* of his previous holdings with the Supplier. The number of points on the certificate supplied by PR corresponds to the number of points Mr E had left in his previous product with the Supplier, so it seems to me that the reason for the discrepancy that PR has identified is that the certificate doesn't relate to the Purchase Agreement.

It follows that 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 Mr E in arguing that his credit relationship with the Lender was unfair to him for reasons relating to commission given the facts and circumstances of this complaint.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr E, 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 Mr E 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 Mr E.

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 Mr E entered into wasn't high. At £143.81, it was only 0.91% of the amount borrowed. So, had he 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 he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr E had no obvious means of his own to pay for it. And at such a low level, the impact of commission on the cost of the credit he needed doesn't strike me as disproportionate. So, I think he would still have taken out the loan to fund his 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 Mr E but as the supplier of contractual rights he obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to him when arranging the Credit Agreement and thus a fiduciary duty.

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 Mr E.

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 Mr E and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. 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 Mr E's credit relationship with the Lender wasn't unfair to him 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 Mr E'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 Mr E (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 Mr E 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 him. 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 he would still

have taken out the loan to fund his 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 Mr E to accept or reject my decision before 17 February 2026.



Will Culley
Ombudsman

I've considered the relevant information about this complaint.

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

The deadline for both parties to provide any further comments or evidence for me to consider is **21 November 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from Mr E, 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 E complains Mitsubishi HC Capital UK PLC (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with him under Section 140A of the CCA.

Mr E is represented in his complaint by a professional representative ("PR").

What happened

This complaint relates to a timeshare purchase made by Mr E from a timeshare provider (the "Supplier") on 16 September 2015. This was the last of several purchases Mr E made from the Supplier from 2010 onwards. I've outlined the basic details below:

- The purchase made on 16 September 2015 (the "Time of Sale") was of a membership in a variant of the Supplier's "Fractional Club" which I will refer to as the "Signature" variant (the "Purchase Agreement"). Mr E bought 1,420 points in the Signature variant, which entitled Mr E to stay in a specific luxury apartment named on his contract (the "Allocated Property") in the 40th week of the year, every other year. Alternatively, for a small fee, Mr E could use these points to book accommodation elsewhere in the Supplier's portfolio. This type of timeshare was also asset-backed, meaning it included a share in the future sale proceeds of the Allocated Property, when the contract was due to come to an end. The purchase cost £15,453, but Mr E traded in some of his existing Fractional Club points towards the price, leaving £7,523 to pay.
- The Supplier arranged a loan (the "Credit Agreement") with the Lender for £15,803, which was made up of the balance of the purchase price and the consolidation of £8,280 of existing debt relating to a previous purchase financed by another lender. This was repayable over 180 months at £182.53 per month. The loan was settled early, on 7 September 2017.
- In March 2023, through PR, Mr E 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 Mr E sought to hold the Lender liable under Section 75 of the CCA, and matters which were alleged to have rendered the credit relationship between him and the Lender unfair under Section 140A of the CCA.

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.

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

The legal and regulatory context

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

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

What I've provisionally decided – and why

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

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

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

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

That said, as a general rule, I think it's reasonable for creditors to reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 ("LA"), as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would have been available in court. So, it is relevant to consider whether Mr E's Section 75 claim was time-barred under the LA before PR put the claim to the Lender on his behalf.

As I mentioned above, a claim under Section 75 is a "like claim". This means it mirrors the claim Mr E could have made against the Supplier.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued. A claim for breach of contract against the Supplier would also be subject to a limitation period of six years from the

date on which the cause of action accrued.

Any claim against a lender under Section 75 is also “*an action to recover any sum by virtue of any enactment*” under Section 9 of the LA. Such claims also have a time limit of six years from the date the cause of action accrued.

In claims for misrepresentation, the cause of action accrues at the point a loss is incurred. In Mr E’s case, that’s when he entered the agreement to purchase the timeshare, and the related Credit Agreement, on 16 September 2015. This would be mirrored in the claim against the Lender.

Mr E first notified the Lender of his Section 75 claim in March 2023, more than six years after the cause of action accrued in relation to his claim for misrepresentation. So I don’t think it was unfair or unreasonable of the Lender to decline the part of the claim relating to the Supplier’s alleged misrepresentations.

That said, misrepresentation is something which could render a credit relationship between a borrower and a lender unfair, so I have gone on to consider Mr E’s allegations of misrepresentation when considering his complaint relating to his credit relationship with the Lender.

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

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

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

Table of Summarised Findings

Matters allegedly rendering the credit relationship unfair	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 variant could be sold back to the Supplier or easily to third parties at a profit.	There's very little colour or context to this allegation, meaning it's difficult to conclude the Supplier represented this to be the case. Mr E also signed to say he understood the Supplier would not buy back the membership.
It was falsely represented that Mr E 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. The Purchase Agreement said Mr E had the right to stay in the Allocated Property in week 40, every second year.
Mr E was pressured into making the purchase.	There is little evidence of what specifically the Supplier said or did which meant Mr E felt he had no choice but to purchase. Mr E also did not use the cooling-off period to cancel the purchase, which I would have expected had he only purchased because he was pressured into doing so.
The Lender failed to carry out the creditworthiness/affordability checks required by industry guidance or regulations.	Mr E 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 an unauthorised credit broker, meaning it was unenforceable.	The entity named on the Credit Agreement as the credit broker did <i>not</i> hold the right permissions from the Financial Conduct Authority (FCA) at the relevant time. That said, I don't think this is a reason to uphold this complaint. See further details below.
The Purchase Agreement contained terms which were unfair to Mr E, 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 Mr E'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 Mr E's decision to buy the Fractional Club membership, to render the credit relationship between him and the Lender unfair. See further details below.
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I'll now set out the expanded reasons for my decision relating to the arrangement of the Credit Agreement by an unauthorised credit broker, and the Supplier's alleged selling or marketing of the Signature variant to Mr E as an investment.

Unauthorised credit broker

Having checked the relevant records, such as the FCA's register, it does not appear that the entity named as the credit intermediary on the Credit Agreement, was authorised to carry on such activities.

The upshot of PR's argument in relation to this concern, is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr E knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for the Signature variant. And as there's a lack of evidence the lending was unaffordable for him, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so, I can't see how that led to Mr E incurring a financial loss – such that I can say that the credit relationship in question was unfair on him as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate him, even if the loan wasn't arranged properly.

Sale or marketing of the Signature variant 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 Mr E that the Signature variant 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 Mr E's decision to go ahead with his purchase, to be able to arrive at a conclusion that the credit relationship between him and the Lender was rendered unfair to him 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 Mr E, in his own words, in relation to any aspect of his 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.

After our Investigator issued their assessment on the complaint, PR sent us a copy of a witness statement from Mr E and his wife, said to have been completed in July 2020. I'm satisfied, on the balance of probabilities, that this statement represents Mr and Mrs E's genuine recollections from the Time of Sale, as of July 2020. The statement is handwritten, signed and dated 30 July 2020 and the content is consistent with it having been written at around that time.

However, the witness statement does not support an allegation that the Supplier sold or marketed the Signature variant to Mr E as an investment. Neither he nor Mrs E make any mention of the Supplier having done this in the witness statement. The closest they come to saying something of that nature, is where they explain that they are worried, in light of their age and health, that the Allocated Property might not be sold in good time when their membership comes to an end. But no expectation or hope of a financial gain or profit comes across in the statement.

In light of this, I have to conclude that, if the Supplier *did* market or sell the Signature variant to Mr E as an investment, contrary to the prohibition in the Timeshare Regulations, then this was not a material factor in Mr E's decision to go ahead with his purchase, and I'm unable to say therefore that this was something which rendered his credit relationship with the Lender unfair to him.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr E's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

My provisional decision

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

Will Culley
Ombudsman