DRN-6096054

The complaint

Mrs and Mr O 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.

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

What happened

I issued a provisional decision on Mrs O and Mr O's complaint on 22 December 2025, in which I set out the background to the case and my provisional findings on it. A copy of that provisional decision is appended to, and forms a part of, this final decision, so it's not necessary to go over the details again.[1] However, in very brief summary:

- Mrs O and Mr O entered an agreement to buy a timeshare (the "Purchase Agreement") from a timeshare provider (the "Supplier") on 19 February 2019 (the "Time of Sale"), for £39,213, with a balance to pay of £7,814 after the trade-in of their existing timeshare holdings with the Supplier. This was financed by a loan of the same amount from the Lender (the "Credit Agreement").

- The timeshare was a type of asset-backed timeshare ("FPOC2") which entitled Mrs O and Mr O 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. Mrs O and Mr O's previous timeshare with the Supplier, which they'd traded in, was of an earlier version of the same type of timeshare ("FPOC1"), which was asset-backed in the same way but had some key differences.

- Mrs O and Mr O 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, matters giving rise to an unfair credit relationship between them and the Lender, and there having been a breach of Spanish law, confirmed by the courts in Spain.

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

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

- The Lender had not been unfair or unreasonable in declining Mrs O and Mr O's Section 75 claim for misrepresentation because the cash price of the purchase was too high for Section 75 protection to apply. Additionally, the claim would have been time-barred under the Limitation Act 1980, giving the Lender a complete defence to

[1] Some typographical errors which appeared in the provisional decision have been corrected in the appended copy.

it. I thought about whether Section 75A, which did not have such restrictive financial limits, might have been of assistance to Mrs O and Mr O, but concluded it did not because it did not cover misrepresentation, and would also have been time-barred.

I noted that misrepresentations could be relevant when assessing the fairness of a credit relationship, but I didn't think the allegations in this case led to a conclusion that the credit relationship had been rendered unfair to Mrs O and Mr O 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 Mrs O and Mr O.

- The Lender had not participated in a credit relationship with Mrs O and Mr O that was unfair to them because:

  - Regardless of whether the Lender had carried out appropriate checks before lending to Mrs O and Mr O, there was a lack of evidence the loan had been unaffordable for them at the time.

  - I noted the credit broker did appear to have held the required regulatory permissions at the Time of Sale, so it was not the case that the Credit Agreement had been arranged by an unregulated credit broker.

  - There was insufficient persuasive evidence that Mrs O and Mr O 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 Mrs O and Mr O or caused them to behave to their detriment.

  - It was possible the Supplier had breached Regulation 14(3) of the Timeshare Regulations by marketing the timeshare to Mrs O and Mr O as an investment, but I was not persuaded by Mrs O and Mr O's testimony on this issue. In particular:

    - Their witness statement was difficult to follow but, on balance, I thought they only recalled the Supplier selling the FPOC1 timeshare to them as an investment, not the FPOC2 timeshare they bought at the Time of Sale.

    - This was supported by other evidence and the circumstances. I thought it was less likely that the Supplier would have focused on the share of the Allocated Property as a selling point for an existing customer who already held such a product, and I was aware from the Supplier's training and sales documentation that it changed the focus of its sales pitch depending on whether someone already had a fractional timeshare or not. I thought it more likely the focus for Mrs O and Mr O would have been on the differences between the FPOC1 and FPOC2 products which might benefit them, such as the elimination of booking fees.

        - The Supplier's notes from the Time of Sale indicated Mrs O and Mr O had decided to go ahead because they wanted to avoid paying booking fees, appearing to confirm this benefit had been promoted to them.

- Given the Purchase Agreement was governed by English law, it wasn't clear that Spanish law would be deemed relevant were the validity of the agreement to have been litigated in an English Court. Without such a ruling on similar circumstances to those in Mrs O and Mr O's case, I didn't think it was fair and reasonable to uphold the complaint for the reasons PR had articulated relating to breaches of Spanish law.

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. PR also argued that Section 75 of the CCA did apply to Mrs O and Mr O's purchase, because each week of timeshare that made up the purchase should be considered a separate item for the purposes of that piece of legislation. Split up in this way, each week would be within the range of prices to which Section 75 applied.

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 primarily to the issue of whether the credit relationship between Mrs O and Mr O and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to Mrs O and Mr O as an investment at the Time of Sale, and the impact of this on their purchasing decision. PR also outlined its disagreement over my finding that Section 75 of the CCA didn't apply to the purchase. 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 75 of the CCA: was the purchase within the range of prices to which Section 75 would apply?

It's unclear to me why PR has focused on this point following my provisional decision. In my provisional decision, I explained why I thought Section 75 didn't apply to the purchase, noted

that the Limitation Act 1980 would have given the Lender a full defence to any claim if Section 75 *had* in fact applied, and then went on to explain that I could still look into the alleged misrepresentations which would ordinarily have been considered under Section 75, as matters which could have rendered the credit relationship unfair to Mrs O and Mr O within the meaning of Section 140A of the CCA.

In short, nothing in this case turned on the application of Section 75 to the purchase. For what's it worth, however, I think PR is wrong to say that, for the purposes of Section 75, the purchase should be split up into weeks of timeshare purchased.

I note that none of the relevant paperwork prices the sale per week. Rather, an all-inclusive price is quoted. I'm aware that the Supplier usually completed a "pricing sheet" which broke down aspects of the price but in my experience this did not break down the price into weeks. I think the *overall* price is the relevant price for the purposes of Section 75 but, as I've already said, nothing turns on this given the other obstacles in the way of a successful Section 75 claim.

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 this. I could summarise its arguments as follows:

- It was aware that I had upheld another complaint from Mrs O and Mr O in relation to the prior, FPOC1 purchase, based on the same witness statement. It was confused by this inconsistency – how could I have upheld one complaint and not upheld the other in such circumstances? I had not questioned the credibility or authenticity of the statement. It was irrational not to treat it in the same way across the two different cases. There was nothing in the statement's wording to suggest Mrs O and Mr O's statement was limited only to the 2012 FPOC1 purchase.

- It didn't think my finding that Mrs O and Mr O's witness statement was confusing and "jumps between different purchases" was fair. It considered Mrs O and Mr O's assertion that what they were sold was an investment was clearly a general statement which was meant to apply to the way the Supplier sold products in general.

- PR considered it was likely the Supplier would, at the Time of Sale, have reinforced the representations it had made at the 2012 sale about the product on sale being an investment. At the very least, it considered it was unlikely the Supplier would have withdrawn or corrected its 2012 representations, meaning that it had continued to influence Mrs O and Mr O's state of mind at the Time of Sale.

- It considered my findings were essentially speculative, based on inference and conjecture.

- Even if Mrs O and Mr O had been motivated by other factors when making their purchase at the Time of Sale, it didn't preclude them from also being materially motivated by the prospect of the timeshare being an investment.

I think PR makes some interesting points, but it is entirely possible, rational, and reasonable to arrive at different conclusions regarding different sales, based on the same witness statement. PR will recall that, in the other complaint it refers to, I described the case as being "borderline", which is to say that it could quite easily have been a different outcome. On the balance of probabilities, I was persuaded that Mrs O and Mr O were likely to be referring to their 2012 purchase when they recalled the Supplier having sold a product to them as an

investment. That is part of why their other complaint was upheld. But I remain unconvinced that their recollection covered the 2014 sale which is the subject of this complaint.

Mrs O and Mr O made six purchases from the Supplier and cancelled another three. Their witness statement is a jigsaw puzzle of memory fragments which relate to a number of different purchases (and potentially cancelled purchases), and not in chronological order. I don't think that for me to say it was confusing, and jumped between different purchases, was an unfair characterisation. PR has said it was a general statement and not meant to deal with any particular sale. I don't think that is helpful to Mrs O and Mr O's case – a general statement that doesn't deal with the *specifics* of the sale being complained about, is of limited evidential value. It is not, in my view, a sound basis on which to uphold a complaint.

While PR has criticised my use of inference to interpret Mrs O and Mr O's meaning when considering their witness statement, it was necessary for me to draw inferences in the circumstances, given the nature of the statement. The inferences were based on:

- The Supplier's notes, which referred to Mrs O and Mr O having proceeded at the Time of Sale because they wanted to not have to keep paying booking fees.

- My knowledge and experience of the Supplier's sales processes and training materials, how these differed from product to product, and depended on what products a prospective purchaser already held.

- My knowledge of the features of the Supplier's products.

I noted that the FPOC1 product had a booking fee which Mrs O and Mr O's previous product from the Supplier did not have. These could be up to £200 per week booked. For customers who had a lot of points to spend on weeks, the booking fees could be a considerable expense. The FPOC2 product dispensed with these fees, and this was the key difference between the product Mrs O and Mr O had, and the one the Supplier was trying to sell them at the Time of Sale. I thought it was likely in the circumstances that *this* is what the Supplier would have focused on, rather than features which were the same.

Further, I noted that the Supplier's sales and training materials for the FPOC1 product appeared explicitly to frame the product as an investment, while the equivalent materials for FPOC2 did not. I was also aware that the Supplier's sales pitch for customers who already held a "fractional" timeshare, was different to the sales pitch for customers without such a timeshare. The difference being that the share in the Allocated Property didn't appear to be focused on for the former.

All of this was consistent with what the Supplier said in the notes it made at the Time of Sale. I understand PR's concerns about these notes, but I did not solely rely on them when drawing the conclusions I did.

Finally, PR's argument that the Supplier failed to correct any improper marketing of the FPOC1 product as an investment, when selling the FPOC2 product to Mrs O and Mr O at the Time of Sale, doesn't help to make the case that the credit relationship between Mrs O and Mr O and the Lender was unfair to them in connection with the Purchase Agreement. The Supplier's improper marketing doesn't "carry through" to subsequent purchases in the way PR seems to be arguing. The Supplier would need to have repeated its breach of Regulation 14(3) at the Time of Sale, to potentially render the credit relationship between Mrs O and Mr O and the Lender unfair to them. For the reasons already explained, I don't think that it did. If the Lender had *also* provided the credit for the FPOC1 purchase, then the situation might have been different.

In light of what I've explained above, and my findings in the appended provisional decision, I remain of the view that while it's possible the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I don't think it's probable. It follows that I don't find that the credit relationship between Mrs O and Mr O, and the Lender, was rendered unfair to them for that reason.

The alleged payment of a commission by the Lender to the Supplier

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

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

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

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

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was *"so high"* and *"a powerful indication that the relationship…was unfair"* (see paragraph 327);

2. The failure to disclose the commission; and

3. The concealment of the commercial tie between the car dealer and the lender.

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

1. The size of the commission as a proportion of the charge for credit;

2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);

3. The characteristics of the consumer;

4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and

5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, it sets out principles which apply to credit brokers other than car dealer–credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mrs O and Mr O 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 Mrs O and Mr O, nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led Mrs O and Mr O into a credit agreement that cost disproportionately more than it otherwise could have.

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

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

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mrs O and Mr O entered into wasn't high. At £781.40, it was only 10% of the amount borrowed. 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, Mrs O and Mr O wanted Fractional Club membership and had no obvious means of their own to pay for it. And at such a low level, the impact of commission on the cost of the credit they needed for a timeshare they wanted 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 Mrs O and Mr O 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 Mrs O and Mr O.

Section 140A: Conclusion

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Mrs O and Mr O 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 Mrs O and Mr O 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 Mrs O and Mr O complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

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

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mrs O and Mr O 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 the appended provisional decision, I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O and Mr O to accept or reject my decision before 18 February 2026.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at a different set of conclusions to our Investigator, so I'm issuing this provisional decision to give the parties to the complaint an opportunity to provide further submissions.

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 Mrs O and Mr O, or if they tell me they accept my provisional decision, I may arrange for the complaint to be closed as resolved without a final decision.

The complaint

Mrs and Mr O 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.

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

What happened

This complaint relates to a timeshare purchase made by Mrs and Mr O from a timeshare provider (the "Supplier") on 8 June 2014. This was their final purchase from the Supplier. I've outlined the basic details below:

- The purchase made on 8 June 2014 was of a membership in the Supplier's "Fractional Club". Mrs and Mr O bought 3,340 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 Mrs and Mr O's purchase paperwork (the "Allocated Property"). The purchase cost £39,213, but after trading in their existing Fractional Club membership, there was a balance of only £7,814 to pay.

- The Supplier arranged a loan (the "Credit Agreement") with the Lender for the balance of the purchase price. This was repayable over 180 months at £123.66 per month.

- In February 2022, through PR, Mrs and Mr O 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 Mrs and Mr O 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, upheld the complaint, reasoning that the credit relationship between the Lender and Mrs and

Mr O had been rendered unfair to them due to the Supplier having marketed or sold the timeshare to them as an investment, in breach of the regulations on selling timeshares.

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

The legal and regulatory context

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

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

What I've provisionally decided – and why

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

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

I think it's also important at this stage to outline very briefly the general grounds on which Mrs and Mr O 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 Mrs and Mr O 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, including that the cash price of the goods or services purchased must not be over £30,000. In this case, the Fractional Club membership's price before trade-in was over £30,000, meaning the protection of Section 75 doesn't apply to the purchase.

Section 75A, which has higher financial limits, would still apply in this case, but it covers breaches of contract only, not misrepresentations. As Mrs and Mr O's case focuses on misrepresentations only, this part of the CCA does not assist them here.

Finally, I note that if Section 75 or Section 75A *had* been of any potential assistance to Mrs and Mr O, it's likely any claim would have been time barred under the Limitation Act 1980 due to the claim being notified to the Lender more than six years after the alleged misrepresentations, and their immediate consequences, occurred.

All that said, misrepresentations can be a relevant factor when assessing the fairness of a credit relationship, and I will go on to consider Mrs and Mr O's allegations of misrepresentation under that section of my decision.

Section 140A of the CCA operates in a more complex manner than Section 75. Insofar as is relevant to Mrs and Mr O'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 (such as misrepresentations) 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

Alleged 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. Mrs and Mr O would also have signed to say they understood the Supplier would not buy back the membership.
It was falsely represented that Mrs and Mr O 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.
Other matters allegedly rendering the credit relationship unfair	**Reason why this complaint doesn't succeed**
Mrs and Mr O were pressured into making the purchase.	There is little evidence of what specifically the Supplier said or did which meant Mrs and Mr O felt they had no choice but to purchase. Mrs and Mr O 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.	Mrs and Mr O 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 an unauthorised credit broker, meaning it was unenforceable.	It appears the entity which arranged the Credit Agreement held the correct authorisation from the Financial Conduct Authority at the relevant time, so the agreement was not arranged by an unauthorised credit broker.
The Purchase Agreement contained terms which were unfair to Mrs and Mr O, including terms allowing the Supplier to repossess the timeshare for minor breaches.	While there are terms within the Purchase Agreement which could be operated in an unfair way, no evidence has been provided that the terms have been operated in this way in practice, or likely will be in future, in Mrs and Mr O's case, or that the terms have caused them to act to their detriment.
The Purchase Agreement has been declared null and void in the Spanish courts, meaning the Credit Agreement should be treated as having been rescinded.	Given the Purchase Agreement is governed by English law, it's not clear that Spanish law would be deemed relevant were the validity of the agreement to be litigated in an English Court. ECJ rulings from 2023 suggest English law applies. **See further details below**.
The Supplier marketed and sold the membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations.	While it's possible the Supplier marketed the product in this way, it would need to have played a material part in Mrs and Mr O'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 matter of Mrs and Mr O's Spanish court judgments, and the allegation that the Supplier marketed the Fractional Club membership to them as an investment.

The Supplier's alleged breach of Spanish Law and its implications on the Credit Agreement

PR argues that, because the Purchase Agreement was unlawful under Spanish law in light of certain information failings by the Supplier, I should treat that Agreement and the Credit Agreement as rescinded by Mrs and Mr O and award them compensation accordingly – in keeping with the judgment of the UK's Supreme Court in *Durkin v DSG Retail* [2014] UKSC 21 ('*Durkin*').

However, the Lender hasn't been party to any court proceedings in Spain, and while the Supplier (i.e., the company that entered into the Purchase Agreement) does appear to be the subject of a Spanish court judgment in Mrs and Mr O's favour, it seems to me that there is an argument for saying that the Purchase Agreement is valid under English law for the purposes of *Durkin*.

I also note that the Purchase Agreement is governed by English law. So, it isn't at all clear that Spanish law would be held relevant if the validity of the Purchase Agreement were litigated between its parties and the Lender in an English court. For example, in *Diamond Resorts Europe and Others* (Case C-632/21), the European Court of Justice ruled that, because the claimant lived in England and the timeshare contract was governed by English law, it was English law that applied, not Spanish, even though the latter was more favourable to the claimant in ways that resemble the matters seemingly relied upon by PR.

What's more, as Mrs and Mr O went some way to taking advantage of the Purchase and Credit Agreements[2], an English court might hesitate to uphold a claim for rescission of either Agreement because there are equitable reasons to do so.

Overall, therefore, in the absence of a successful English court ruling on a timeshare case paid for using a point-of-sale loan on similar facts to this complaint, and given the facts and circumstances of this complaint, I'm not persuaded that it would be fair or reasonable to uphold it for this reason.

The Supplier's alleged marketing or sale of the Fractional Club membership as an investment

Given what is known about the way in which the Supplier sold Fractional Club memberships, I think it's *possible* the sales representatives could have said or suggested to Mrs and Mr O 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 Mrs and Mr O's decision to go ahead with her 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.

I will note, first of all, that I have seen a witness statement from Mrs and Mr O which appears to date to 2019. This is the only evidence we have from them of what happened at the Time of Sale. It is in some respects a confusing and unsatisfactory witness statement. Mrs and Mr O appear to speak generally about their experiences with the Supplier, jumping between different purchases (some of which dated many years before the Time of Sale) without much in the way of context. It is difficult to ascertain which purchases they are talking about at which point, and certain purchases appear to be conflated. The most relevant part of their statement reads as follows:

> *"We understood the length of the contract was 90? Years and no right to cancel was ever explained. We were informed it was a good investment and would increase in value especially being fractional it would be easy to sell even back to the resort."*

I think it's important to restate that this was not Mrs and Mr O's first purchase in the Fractional Club. At the Time of Sale, Mrs and Mr O were already Fractional Club members. They had traded in a different type of membership, which did not come with a share in the net sale proceeds of an Allocated Property, for the Supplier's first version of the Fractional Club (sometimes referred to as "FPOC1") in September 2012.

Mrs and Mr O's statement is somewhat difficult to follow, and while I think it is apparent they recall the Supplier told them Fractional Club membership was an investment, I think it is

[2] It appears that they used their membership to take holidays up until 2019.

more likely they are talking about the *first* purchase in September 2012, and not the one this complaint relates to. I say this for the following reasons:

Firstly, the Supplier's post-sale notes from the Time of Sale record that Mrs and Mr O were "moving forward to lose booking fees". PR says the Supplier's notes can't be trusted, but one of the key differences between FPOC1 and the second version of the Fractional Club membership which Mrs and Mr O purchased at the Time of Sale ("FPOC2") was that FPOC2 did not require the payment of a booking fee, which could be up to £200 per week, for booking holidays. For customers like Mrs and Mr O, who had a lot of points to spend on weeks and who took a fair number of holidays, I think it's likely this would have been an attractive selling point.

Secondly, as existing Fractional Club members, it would not have been necessary for the Supplier to sell the benefit of the share in the net sale proceeds of the Allocated Property to Mrs and Mr O at the Time of Sale, whereas it would have been a clear selling point for their initial purchase in September 2012. I'm aware, based on the Supplier's training literature for sales representatives, that it pitched products differently depending on the prospective purchaser's current membership position. So a non-Fractional Club member would me more likely to receive a sales pitch with more of a focus on the Allocated Property, while an existing Fractional Club member would be more likely to receive a sales pitch focused on other benefits, such as not having to pay booking fees, or having a guaranteed right to book a specific apartment.[3]

I don't think the content of Mrs and Mr O's statement can overcome the factual circumstances which, to my mind, point away from a conclusion that they are referring to the purchase they made at the Time of Sale when they say they were told "it was a good investment and would increase in value". It is just not persuasive enough.

Overall, given the facts and circumstances of this complaint, I do not currently think that the Lender acted unfairly or unreasonably when it dealt with Mrs and Mr O'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'm not minded to uphold this complaint.

Will Culley
Ombudsman

[3] This was a feature of a *different* product offered by the Supplier which was promoted to both non-Fractional and Fractional Club members, but I've included it here as an example.