

## The complaint

Mrs and Mr P 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.

## What happened

I issued a provisional decision on Mrs and Mr P’s complaint on 12 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:

- Mrs and Mr P entered an agreement to buy a timeshare (the “Purchase Agreement”) from a timeshare provider (the “Supplier”) on 2 October 2018 (the “Time of Sale”), for £13,430. 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 which entitled Mrs and Mr P 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 and Mr P 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 Mrs and Mr P’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 Mrs and Mr P.
- The Lender had not participated in a credit relationship with Mrs and Mr P that was unfair to them because:

- Regardless of whether the Lender had carried out appropriate checks before lending to Mrs and Mr P, 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 Mrs and Mr P 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 and Mr P, now or in the future.
- It was possible the Supplier had breached Regulation 14(3) of the Timeshare Regulations by marketing the timeshare to Mrs and Mr P as an investment, but I had concerns about how long after the Time of Sale Mrs and Mr P had been asked to recall their memories, after external events which could have influenced their recollections. I did not think I could place much weight on their testimony as a result. I also considered that their testimony did not make the case that they had been motivated to purchase the timeshare because they thought it was an investment. I thought they had clearly been motivated by holidays, meaning that if the Supplier had in fact breached the relevant prohibition, this had not led to a credit relationship which was unfair to Mrs and Mr P.

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.

Following the responses from both parties, I’ve considered the case afresh and having done so, I’ve reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn’t to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven’t commented on, or referred to, something that either party has said, this doesn’t mean I haven’t considered it.

Rather, I’ve focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

PR’s comments in response to the provisional decision relate only to the issue of whether the credit relationship between Mrs and Mr P and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to Mrs and Mr P 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 hadn’t shared the Investigator’s assessment on this complaint (or their linked complaint) with Mrs and Mr P, saying this was done in order not to influence their

recollections. PR said Mrs and Mr P were also unaware about the judgment handed down in *Shawbrook and BPF v FOS*<sup>1</sup>. PR said this means their recollections have not been influenced by either the Investigator's assessment on their linked case (which prompted their witness statement, which was then submitted to support *this* case) or the judgment.

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

I have thought about what PR has said, but on balance, I don't find it a credible explanation of the contents of Mrs and Mr P's evidence. Here, PR responded to our Investigator's assessment on their linked case to say that Mrs and Mr P alleged that the timeshare had been sold to them as an investment and it provided evidence from Mrs and Mr P to that effect, which was then submitted to support their complaint in this case also. I fail to understand how Mr and Mrs P disagreed with the assessment on the basis that the timeshare was sold as an investment if they didn't know our Investigator's conclusions. It follows, in my view, that Mrs and Mr P did know about our Investigator's assessment on their other case before their evidence was provided.

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

PR has also argued that, based on the testimony I've analysed above, it was clear that Mrs and Mr P were motivated both by the prospect of holidays and of the timeshare being an investment, when they decided to go ahead with their purchase. This was enough to render their credit relationship with the Lender unfair to them.

While on reflection I can see an argument, based on Mrs and Mr P's testimony, that the investment aspect of the timeshare was a material factor in their purchasing decision, there remains the insurmountable problem of the lack of weight I can place on that testimony for the reasons I've already explained.

So, ultimately, for the above reasons, along with those I already explained in my provisional decision, I remain unpersuaded that any breach of Regulation 14(3) was material to Mrs and Mr P's purchasing decision.

#### 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

---

<sup>1</sup> *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*').

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 and Mr P 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 and Mr P, 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 and Mr P 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 and Mr P.

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 and Mr P entered into wasn't high. At £671.50, it was only 5% 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 and Mr P wanted the timeshare 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 and Mr P 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 and Mr P.

### **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 and Mr P 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 and Mr P 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 and Mr P 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 and Mr P (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 and Mr P 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 Mrs P and Mr P to accept or reject my decision before 20 February 2026.



Will Culley  
**Ombudsman**

## COPY OF PROVISIONAL DECISION

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 **26 November 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from Mrs P and Mr P, 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 P 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 P are represented in their complaint by a professional representative ("PR").

### What happened

This complaint relates to a timeshare purchase made by Mrs and Mr P from a timeshare provider (the "Supplier") on 2 October 2018. This was their first of two purchases from the Supplier. I've outlined the basic details below:

- The purchase made on 2 October 2018 (the "Time of Sale") was of a membership in the Supplier's "Fractional Club". Mrs and Mr P bought 1,040 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 P's purchase paperwork (the "Allocated Property"). The purchase cost £13,430.
- The Supplier arranged a loan (the "Credit Agreement") with the Lender for the £13,430 purchase price. This was repayable over 180 months at £155.19 per month.
- In January 2023, through PR, Mrs and Mr P 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 P sought to hold the Lender liable under Section 75 of the CCA, and matters which were alleged to have rendered the credit relationship 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.

Mrs and Mr P 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 P 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 P 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 Mrs and Mr P'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. Mrs and Mr P also signed to say they understood the Supplier would not buy back the membership.
It was falsely represented that Mrs and Mr P 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.
<b>Matters allegedly rendering the credit relationship unfair</b>	<b>Reason why this complaint doesn't succeed</b>
Mrs and Mr P were pressured into making the purchase.	There is little evidence of what specifically the Supplier said or did which meant Mrs and Mr P felt they had no choice but to purchase. Mrs and Mr P 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 P 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 appropriate permissions 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 P, 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 P's case.
The Supplier marketed and sold the membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations.	While it's possible the Supplier marketed the product in this way, it would need to have played a material part in Mrs and Mr P's decision to buy the Fractional Club membership, to render the credit relationship between them and the Lender unfair. <b>See further details below.</b>

I'll now set out the expanded reasons for my decision relating to the allegation that the Supplier sold or marketed the Fractional Club membership to Mrs and Mr P as an investment.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mrs and Mr P, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mrs and Mr P as an investment in breach of Regulation 14(3).

However, if it was the case that the Supplier did breach Regulation 14(3) in this way, it would be necessary to show that Mrs and Mr P's decision to make their purchase was materially affected by the Supplier's breach, in order to conclude that their credit relationship with the Lender had been rendered unfair to them. In other words, the prospect of the product being an investment in the sense of it being something that could or would make them a financial gain or profit, would need to have been important to that decision.

On my reading of the evidence in this case, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mrs and Mr P decided to go ahead with their purchase *at the time*. I'll explain why.

Firstly however, I need to comment on the direct testimony we've received from Mrs and Mr P about their experiences with the Supplier. The letter of complaint from PR is materially the same in content and allegations as many other letters I have seen from the PR relating to other complainants. In other words, the allegations in the letter are generic and of very limited assistance in determining what happened at the Time of Sale. In light of this, Mrs and Mr P's recollections, in their own words, are likely to be key evidence.

Mrs and Mr P had a separate complaint about their later purchase from the Supplier, which was financed by another lender. After an unfavourable assessment from our Investigator in that case, PR produced a witness statement from Mrs and Mr P, which has now also been submitted by PR to support the complaint about the Lender.

The evidence suggests PR had a discussion with Mrs and Mr P following our Investigator's assessment on the other case, after which they emailed PR with a statement of their recollections of their purchases from the Supplier. It is difficult to attach as much weight to a statement produced this many years after the Time of Sale, compared to a statement written nearer the time when memories may have been fresher and freer from the potential influence of later events.

Since the Time of Sale various events have occurred, such as the judgment in the case of *Shawbrook & BPF v. FOS*<sup>2</sup>, the receipt of an unfavourable assessment from our Investigator on the case about the later sale, and the process of preparing and proceeding with a mis-selling claim. All of these things can influence a person's memories or recollections.

That said, I've considered Mrs and Mr P's recollections carefully and, even I could attach much weight to them, I don't think they lend any strength to a conclusion that they had purchased the Fractional Club membership at the Time of Sale because they were motivated by the prospect of it being an investment.

In their statement, they mention they were interested in the Fractional Club product because they really liked to travel. And that when they later upgraded their membership, the Supplier said this would allow them to have better holidays which they'd get more out of. I've also considered the notes recorded by the Supplier at the Time of Sale. These go into a fair amount of detail around Mrs and Mr P's reasons for buying, which I think are consistent with their stated interest in the holiday features of the product. For example:

*"nice young couple...very into holidaying they have already visited 18 countries and planning to hit 30 countries before the[y] become 30 years old."*

And...

*"...love to travel, take as many holidays as they possibly can...They will not travel any more with the membership but have joined because the membership will make their travelling much easier and a lot better."*

While Mrs and Mr P do mention the Supplier referring to the product as an investment, the clear motivation which comes across in their recollections, was their desire to use the product for holidays. They don't say or suggest that the share in the Allocated Property was something which was an important factor in their decision. So even if I could attach the appropriate degree of weight to Mrs and Mr P's recollections, I don't think they support the argument being made on their behalf.

That doesn't mean Mrs and Mr P weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as they themselves don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

It follows that I'm unable to conclude that the credit relationship between Mrs and Mr P and the Lender was rendered unfair to them by any breach by the Supplier of Regulation 14(3) of the Timeshare Regulations at the Time of Sale.

## **Conclusion**

---

---

<sup>2</sup> In this case the High Court set out a comprehensive analysis of complaints involving fractional timeshares and provided some clarity on matters such as the potential for a timeshare provider selling a timeshare as an investment, to cause unfairness in the relevant credit relationship between the purchaser and the lender financing the purchase.

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mrs and Mr P'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**