DRN-6113591

The complaint

Mrs A and Mr R complain First Holiday Finance Ltd (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 A and Mr R are represented in their complaint by a professional representative ("PR").

What happened

I issued a provisional decision on Mrs A and Mr R's complaint on 6 January 2026, 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 A and Mr R bought a timeshare from a timeshare provider (the "Supplier") on 19 February 2019 (the "Time of Sale"), for £17,433. 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 A and Mr R 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 A and Mr R sued the Supplier in the courts in Spain, obtaining judgments in 2021 and 2022 declaring their timeshare contract null and void and ordering the Supplier to compensate them. It's my understanding that the Supplier has not paid this compensation.

- Mrs A and Mr R 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 A and Mr R'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 A and Mr R.

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

    - Although I was not convinced, based on the limited evidence provided, that the Lender had carried out the kind of checks it should have before lending to Mrs A and Mr R, there was a lack of evidence the loan had been unaffordable for them at the time. I invited further information from both parties on this point.

    - The Credit Agreement had not been arranged by an unauthorised credit broker.

    - There was insufficient persuasive evidence that Mrs A and Mr R 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 A and Mr R 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 A and Mr R as an investment, but I was not persuaded by their testimony as to this issue. I had concerns over how late in the process Mrs A and Mr R had been asked to record their memories, after many years and various events that could have influenced their recollections. Ultimately, I felt I could not attach enough weight to their testimony on this issue.

- While it may be the case that the Spanish courts had declared Mrs A and Mr R's timeshare contract null and void, it seemed to me that there was still an argument for saying the Purchase Agreement is valid under English law for the purposes of the case of *Durkin v DSG Retail* [2014] UKSC 21 ("Durkin"), which PR sought to rely on to allow Mrs A and Mr R's Credit Agreement to be treated as rescinded. I considered that 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, that it wouldn't be fair or reasonable to uphold the complaint for the reasons PR had articulated relating to the Spanish court judgments.

I invited the parties to the complaint to respond to my provisional decision. The Lender accepted the provisional decision and provided some information about the checks it had carried out before agreeing to lend to Mrs A and Mr R. 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, and the matter of the Spanish court cases. 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.

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 a subset of the grounds of complaint it has advanced previously. Firstly, it has provided submissions on the issue of whether the credit relationship between Mrs A and Mr R, and the Lender, was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to them as an investment at the Time of Sale. It has also provided further argument that the Spanish court judgments are effective for the purposes of considering the Credit Agreement rescinded as per the case of *Durkin*.

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 it hasn't provided evidence to show that the Credit Agreement was unaffordable for Mrs A and Mr R, for example.[1]

Since I haven't been provided with anything more in relation to any other points of complaint 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 suggests it hasn't shared the Investigator's assessment on this complaint with Mrs A or Mr R. PR also said Mrs A and Mr R were also unaware about the judgment handed down in *Shawbrook and BPF v FOS*[2]. PR said this means their recollections have not been influenced by either the Investigator's assessment or the judgment.

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[1] For the avoidance of doubt, I've considered the further information provided by the Lender about the checks it carried out, and I don't think it would reasonably have believed the Credit Agreement was unaffordable based on the results of those checks. Without further information as to Mrs A and Mr R's financial circumstances at the time, this aspect of the complaint cannot proceed any further. As I've said in the main body of this decision, further information was invited, but has not been supplied.

[2] *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*').

Further, PR argued that studies had shown high pressure sales would tend to lead to someone having vivid recollections of what happened during that process, for a variety of reasons.

Part of my assessment of Mrs A and Mr R'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 A and Mr R's evidence. Here, PR responded to our Investigator's assessment to say that Mrs A and Mr R alleged that Fractional Club membership had been sold to them as an investment and it provided evidence from them to that effect. I fail to understand how Mrs A and Mr R 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 they did know about our Investigator's assessment before their evidence was provided.

So, I maintain that there is a risk that Mrs A and Mr R's testimony, vivid or not, was coloured by the Investigator's assessment and/or the outcome in *Shawbrook & BPF v FOS*. And, on balance, the way in which their evidence has been provided makes me conclude that I can place little weight on it. PR has restated its complaint that it was never asked for a witness statement until more recently but – as I said in my provisional decision – an absence of a request for a witness statement or similar document doesn't mean that one couldn't have been produced at an earlier date.

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 P's purchasing decision.

The impact of the Spanish court judgments]

PR disagrees with what I said in my provisional decision about the judgments of the European Court of Justice ("ECJ"). In particular, it says that the ECJ did not rule in case C-821/21, involving the Supplier, that the Supplier's choice of law clause was fair or that the Spanish courts were not permitted to override this clause.

In the provisional decision I did not specifically say that the ECJ had ruled the Supplier's choice of law clause to be fair. I said:

"The court did not say that the Supplier's choice of law clause in that case was objectionable, observing that the law selected under the clause was the same as that of the consumer's country of habitual residence."

I also didn't say in my provisional decision that the ECJ had ruled that the Spanish courts could not override the Supplier's choice of law clause. I said the ECJ had made no ruling on that issue as the question referred to it had been declared inadmissible. I think PR is inviting me to draw a conclusion that the Spanish courts can override the Supplier's choice of law clause (which chose English law) and that the Spanish courts' decision to do so in Mrs A and Mr R's case was correct.

Whether the Spanish courts were right or not to declare Mrs A and Mr R's timeshare contract null and void on the basis of Spanish law, isn't a question that it's necessary for me to answer. This is a complaint about the Lender and the Credit Agreement, and I am not convinced that it would be fair or reasonable to require the Lender to compensate Mrs A and Mr R and treat their loan as rescinded, on the basis of the judgments they've received in the

Spanish courts, 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.

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 A and Mr R to accept or reject my decision before 25 February 2026.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Another Ombudsman has already issued a provisional decision on this complaint. Because this individual has since left the Financial Ombudsman Service, the task of deciding Mrs A and Mr R's complaint has fallen to me. I think it's appropriate in the circumstances to issue a provisional decision of my own.

The deadline for both parties to provide any further comments or evidence for me to consider is **19 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 A and Mr R, 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 A and Mr R complain First Holiday Finance Ltd (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 A and Mr R are represented in their complaint by a professional representative ("PR").

What happened

This complaint relates to a timeshare purchase made by Mrs A and Mr R from a timeshare provider (the "Supplier") on 19 June 2017. This appears to have been Mrs A and Mr R's only purchase from the Supplier. I've outlined the basic details below:

- The purchase made on 19 June 2017 (the "Time of Sale") was of a membership in the Supplier's "Fractional Club". Mrs A and Mr R 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 A and Mr R's purchase paperwork (the "Allocated Property"). The purchase cost £15,246.

- Mrs A and Mr R paid a deposit of £500, and the Supplier arranged a loan (the "Credit Agreement") with the Lender for the £14,746 balance of the purchase price. This was repayable over 24 months at £614.42 per month, on an interest-free basis. It appears Mrs A and Mr R made the first three repayments in full, then made reduced or token repayments thereafter.

- Mrs A and Mr R sued the Supplier in the courts in Spain, obtaining judgments in 2021 and 2022 declaring their timeshare contract null and void and ordering the Supplier to compensate them. It's my understanding that the Supplier has not paid this compensation.

- In October 2021, through PR, Mrs A and Mr R also 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

A and Mr R 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 to them within the meaning of 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 A and Mr R disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to my colleague (and subsequently to me). At this point, in April 2024, PR sent us testimony from Mrs A and Mr R in their own words as to what had happened at the Time of Sale.

The legal and regulatory context

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

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

<u>The Consumer Credit Sourcebook ("CONC") – Found in the Financial Conduct Authority's (the "FCA") Handbook of Rules and Guidance</u>

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

<u>The FCA's Principles</u>

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 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 A and Mr R 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 A and Mr R 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 A and Mr R's case, it means that the credit relationship between them and the Lender can be found unfair because of anything done (or not done) by, or on behalf of, the Lender.

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

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

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 A and Mr R also signed to say they understood the Supplier would not buy back the membership.

It was falsely represented that Mrs A and Mr R would have access to "the holiday apartment" at any time all year round.	This is a vague allegation which also lacks sufficient detail, context or colour to demonstrate the Supplier made such statements.
Matters allegedly rendering the credit relationship unfair	**Reason why this complaint doesn't succeed**
Mrs A and Mr R were pressured into making the purchase.	There is little evidence of what specifically the Supplier said or did which meant Mrs A and Mr R felt they had no choice but to purchase. Mrs A and Mr R 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.	The circumstances, the details of the Credit Agreement, and the repayment history, suggest the loan *may* have been unaffordable, but there's insufficient evidence on file to conclude this. **See further details below.**
The Credit Agreement was arranged by self-employed individuals who were not authorised to do so, meaning it was unenforceable.	It appears the entity which arranged the Credit Agreement held an interim permission from the Financial Conduct Authority at the relevant time, so the agreement was not arranged by an unauthorised credit broker. The employment status of that entity's representatives is not relevant.
The Purchase Agreement contained terms which were unfair to Mrs A and Mr R, 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 A and Mr R'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 A and Mr R's decision to buy the Fractional Club membership, to render the credit relationship between them and the Lender unfair. **See further details below.**
Other Concerns	**Reason why this complaint doesn't succeed**
Mrs A and Mr R have had judgments in the Spanish courts declaring their timeshare contract null and void, which means the Credit Agreement should be treated as rescinded.	In the absence of a successful English court ruling on a timeshare case paid for with a point-of-sale loan on similar facts to this complaint, I'm not persuaded it would be fair or reasonable to uphold the complaint for this reason. **See further details below.**

I'll now set out the expanded reasons for my decision relating to the Lender's decision to lend to Mrs A and Mr R, and the allegation that the Supplier sold the Fractional Club membership to them as an investment.

The decision to lend to Mrs A and Mr R

The Lender had a responsibility to lend to Mrs A and Mr R responsibly. What this essentially meant at the Time of Sale was the Lender had to assess Mrs A and Mr R's application for

the loan to check if they would be able to afford to repay it in a sustainable way. Its assessments had to be proportionate to the circumstances, taking into account the characteristics of the lending being proposed, and Mrs A and Mr R's financial situation.

In order to be sustainable, repayments would need to be able to be made on time and out of income or savings, without having to realise security or assets, and while meeting other reasonable commitments. The Lender had to assess whether the commitment Mrs A and Mr R were signing up to was likely to adversely impact their financial situation. In doing the above, the Lender needed to take adequate steps to ensure the application information it was relying on was complete and correct.

It's unknown what checks, if any, the Lender carried out before agreeing to lend to Mrs A and Mr R. This information has not been provided to date. However, the large size of the loan repayments, at over £600 per month, would suggest to me that some steps should have been taken to ascertain Mrs A and Mr R's income and expenditure, for example.

Given the lack of evidence to show that proportionate checks were carried out by the Lender, I think it's possible it didn't go far enough before agreeing to lend to Mrs A and Mr R. But that doesn't automatically mean that their complaint ought to be upheld. It would need to be shown that the Credit Agreement was in fact not sustainably affordable for them, for me to be able to arrive at a conclusion that their credit relationship with the Lender was rendered unfair to them as a result of any failing here by the Lender.

While there is evidence Mrs A and Mr R stopped making their contractual loan repayments at an early stage – as early as three months into the agreement – different reasons have been suggested for why this happened. The Lender has referred to two potential reasons. It has said that Mrs A and Mr R were advised to stop making their loan repayments by PR or the legal advisers for their court cases against the Supplier. It has also referenced interactions between the Supplier and Mrs A and Mr R, in which a subsequent change in financial circumstances was cited as a reason for repayment difficulties. In Mrs A and Mr R's later witness statement, health problems are referred to, as well as a mortgage which Mrs A and Mr R had applied for prior to the Time of Sale.

None of this is a good basis for me to conclude the Credit Agreement was not sustainably affordable for Mrs A and Mr R at the Time of Sale. More information would be needed to establish this. If Mrs A and Mr R wish to pursue this point further, they will need to provide more information about their financial situation in the months leading up to the Time of Sale. The Lender, for its part, should provide all of the information it received when considering Mrs A and Mr R's lending application, along with any other information it took into account when making its decision to lend. This should include the results of any credit checks it carried out.

However, as things stand, I'm unable to conclude the Lender lent to Mrs A and Mr R irresponsibly.

The implications on the Credit Agreement of the Spanish court judgments

There is not much I can add to what my colleague had to say about this in her provisional decision. However, I note PR provided further submissions on this point in response to that provisional decision, which I'll consider below.

The gist of PR's argument is that, because the Purchase Agreement was unlawful under Spanish law in light of certain information failings by the Supplier, the Purchase and Credit Agreements should be treated as rescinded by Mrs A and Mr R, and I should 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 Spanish court judgments in Mrs A and Mr R's favour, it seems to me that there is still an argument for saying 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 ("ECJ") 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 relied on by PR.

PR, in its more recent submissions, argues that C-632/21 involved a different timeshare provider and therefore isn't applicable to Mrs A and Mr R's scenario. It also argues that it was open to the Spanish courts to apply Spanish timeshare laws even in scenarios, like Mrs A and Mr R's, where the law chosen in the contract was English law. Finally, PR argues that the choice of law clause in Mrs A and Mr R's Purchase Agreement (which chose English law – the law of Mrs A and Mr R's country of residence) was an unfair term.

I'm not convinced that the fact the ECJ judgment involved a different timeshare provider means the principles set out in that judgment cannot be applied to analogous situations where the same choice of law issues are relevant.

Regarding the fairness of the choice of law clause – I note the ECJ commented on this issue in a judgment referred to by PR in its submissions, C-821/21, which involved the Supplier and was handed down at about the same time as the judgment in C-632/21.

The ECJ did not say that such clauses were objectionable, unless there was a failure to inform the consumer that they would also enjoy the protection of the law of their country of habitual residence, so they were not "led into error" about this. The court did not say that the Supplier's choice of law clause in that case was objectionable, observing that the law selected under the clause was the same as that of the consumer's country of habitual residence.

I cannot see that the Supplier informed Mrs A and Mr R in this case that they would enjoy the protection of the laws of their place of habitual residence, but I also fail to see what difference that would have made given the laws chosen in the Purchase Agreement and the laws of their place of habitual residence would have been the same.

Finally, PR's argument that the Spanish courts are free to apply Spanish laws in circumstances where a contract contains a choice of law clause selecting English law, doesn't appear to be supported by the case PR has cited. While it appears that this is something which is technically possible, the ECJ did not answer the question in its judgment insofar as it related to the choice of law clauses in timeshare contracts. The ECJ ruled that a question which had been referred to it on this point was inadmissible due to a lack of detail.

Given what I've said above, I remain of the view that 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, that it wouldn't be fair or reasonable to

uphold this complaint for the reasons PR has articulated relating to the Spanish court judgments.

The Supplier's alleged breach of Regulation 14(3) of the Timeshare Regulations

Given what is known about the way in which the Supplier sold Fractional Club memberships, I think it's possible the sales representatives could have said or suggested to Mrs A and Mr R 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 their decision to go ahead with their purchase, to be able to arrive at a conclusion that the credit relationship between them and the Lender was rendered unfair to them as a result. In this case, the evidence lacks sufficient credibility, for reasons I'll explain.

Up until relatively recently, the Financial Ombudsman Service had received no evidence from Mrs A and Mr R, in their own words, in relation to any aspect of their complaint. All we had to consider was the letter of complaint from PR, which was identical in nearly all respects to other letters of complaint I have seen from PR on behalf of other complainants. In other words, it was generic in nature.

It was only after the Investigator issued an unfavourable assessment of the merits of the complaint, and after the judgment in *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('*Shawbrook & BPF v FOS*') was handed down, that we received a witness statement from Mrs A and Mr R. In this, they recalled that the Supplier led them to believe that Fractional Club membership offered them the prospect of a financial gain. As my colleague also noted, experience tells me that, the more time that passes between a complaint and the event complained about, the more risk there is of recollections being vague, inaccurate and/or influenced by discussion with others. In light of this, I find it difficult to understand why this evidence was not produced and provided to the Financial Ombudsman Service at an earlier date. I appreciate PR has argued that it had never previously been asked specifically for direct testimony from Mrs A and Mr R, but I don't think the absence of a specific *request* would have prevented such evidence from being produced and provided earlier.

There isn't any other evidence on file to corroborate Mrs A and Mr R's more recent evidence about what happened and what their motivations were at the Time of Sale, and there seems to me to be a very real risk that their recollections were coloured by the judgment in *Shawbrook & BPF v FOS*. And with that being the case, I'm not persuaded that I can give their written recollections the weight necessary to conclude that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

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 Mrs A and Mr R'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 currently 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