

The complaint

Mr M's complaint is, in essence, that Clydesdale Financial Services Limited trading as Barclays Partner Finance ('BPF') acted unfairly and unreasonably by being party to an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA').

The timeshare that is being considered here was bought in the names of Mr and Mrs M. But, as the associated loan was in Mr M's sole name, he is the only eligible complainant here. I will, however, refer to both Mr and Mrs M where it is appropriate to do so.

What happened

Mr and Mrs M purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 4 December 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,940 fractional points at a cost of £4,500 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs M more than just holiday rights. It also included a share in the net sale proceeds of a property named on their Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr M paid for their Fractional Club membership by taking finance of £4,500 from BPF in his sole name (the 'Credit Agreement').

Mr M wrote to BPF on 6 July 2022 (the 'Letter of Complaint') to complain about his Fractional Club membership and the associated Credit Agreement. He said that the Fractional Club membership had been mis-sold to him and Mrs M, because, amongst other reasons, the Supplier had led him to believe that Fractional Club was an investment, and that was the only reason they had made the purchase. As such Mr M thought BPF should refund the repayments he made against the loan, along with interest and the management charges he paid to the Supplier.

BPF didn't respond to Mr M with its findings, so he referred his complaint to this Service where it was assessed by an Investigator, who, having considered the information on file, upheld the complaint on its merits.

The Investigator thought that the Supplier had marketed and sold Fractional Club membership as an investment to Mr and Mrs M at the Time of Sale in breach of Regulation 14(3) of the Timeshare Regulations. And given the impact of that breach on their purchasing decision, the Investigator concluded that the credit relationship between BPF and Mr M was rendered unfair to him for the purposes of section 140A of the CCA.

BPF, having considered everything further, made an offer of settlement, and set out how it would calculate and pay fair compensation to Mr M. It said it would:

- Return to Mr M the repayments he made under the Credit Agreement, along with any paid for but unused management charges he paid as a result of the Fractional Club membership.
- From the above payment it would deduct:
 - The cost of any promotional giveaways given to Mr M at the Time of Sale.
 - Where applicable, the value of any holiday taken using the Fractional Club membership.
 - Any rental income Mr M may have received from the Signature membership¹.

(the net repayments)

- Pay 8% simple interest per annum on each of the net repayments from the date each payment was made until the date this complaint is settled.
- Remove any adverse information recorded on Mr M's credit file as a result of the Credit Agreement

It went on to say that the Supplier has confirmed that Mr M would be able to relinquish the Fractional Club membership voluntarily, so it was not necessary to assign to BPF the fractional points or hold them on trust. It would also not be able to indemnify Mr M against any future liabilities to the Supplier.

Mr M did not accept this offer. He said that:

- He had not been consulted on the deduction principles that BPF had outlined, so wanted to be able to understand how these would be calculated.
- He wanted an acknowledgement from BPF that he and Mrs M were mis-sold the Fractional Club membership by the Supplier and an apology for giving them the loan and the burden it had placed on them.
- The compensation also should take into account the mental, emotional and physical stress they had experienced due to the Supplier not providing the kinds of holidays they were led to believe they would get, along with the pressure caused by the loan repayments and annual maintenance fees.
- BPF should add 50% to their calculated figure to reflect the years he and Mrs M had been stuck in the system.

BPF responded by saying that any calculation would be carried out after an Ombudsman's final decision, if one was required. It also apologised to Mr M for the distress and inconvenience caused to them as a result of the Supplier mis-selling the Fractional Club membership.

Mr M did not agree with what BPF had offered, so the matter has come to me for a decision.

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.

It is not in dispute that Mr M's complaint that BPF was party to an unfair credit relationship with him under Section 140A of the CCA ought to be upheld. What has not been agreed is

¹ This was an error as the membership in question was Fractional Club. This error has subsequently been accepted by BPF.

how fair compensation should be calculated, and whether any further compensation should be considered.

When this Service thinks that a business has done something wrong, we aim to put the affected consumer back, as closely as possible, into the position they would have been in had the error not occurred. So, this means, as far as Mr M is concerned, he needs to be in the position he would be in had he not purchased the Fractional Club membership, and not entered into the Credit Agreement.

Having considered everything, I am satisfied that the offer made by BPF in response to the Investigator's view follows that principle and is largely fair and reasonable in the circumstances.

Having thought about what BPF has offered, I can see that all the money paid to it by Mr M for the loan repayments would be returned, with 8% simple interest added for each repayment he made.

But I also think that the deductions to the net repayments that BPF are proposing are fair. Had Mr M not made the purchase, he would not have received any promotional giveaways (if any were indeed received) and he would not have been able to use the membership to take holidays. So it would be fair to allow BPF to make deductions for any benefits Mr and/or Mrs M received as a result of the membership.

I have also considered BPF's point about it not indemnifying Mr M against any ongoing liabilities. However, even if the membership is relinquished, there is a risk that the Supplier could pursue Mr and Mrs M for any outstanding liabilities connected to their membership. And requiring BPF to indemnify Mr M against any liabilities connected to their Fractional Club membership removes this risk, so I think it is a fair and reasonable requirement.

I have also thought about whether it would be fair and reasonable to require BPF to make a further compensation payment to reflect the distress and inconvenience that has been caused to Mr M as a result of the Fractional Club being mis-sold, and the problems he has experienced with the Supplier.

I acknowledge that Mr and Mrs M say they have been frustrated that their Fractional Club membership did not provide all they wanted. But the Supplier's alleged failings in this regard is not something that I can fairly hold BPF directly responsible for.

Any direction to a business to pay compensation to consumers is not designed to punish the business – it is to redress any losses suffered by the consumer. And having considered everything, I think what BPF has offered here is fair. I will set out what I direct it to do below.

Putting things right

Here's what I direct BPF to do to compensate Mr M – whether or not a court would award such compensation:

- (1) BPF should refund Mr M's repayments to it under the Credit Agreement, including any sums paid to settle the debt.
- (2) In addition to (1), BPF should also refund the annual management charges Mr M paid as a result of Fractional Club membership.
- (3) The Lender can deduct:
 - i. The value of any promotional giveaways that Mr M used or took advantage of; and

- ii. The market value of the holidays* Mr and/or Mrs M took using their Fractional Points.

(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)

- (4) Simple interest** at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.
- (5) The Lender should remove any adverse information recorded on Mr M's credit file in connection with the Credit Agreement reported within six years of this decision.
- (6) I understand that BPF says Mr and Mrs M's membership can be relinquished by the Supplier. However if Mr and Mrs M's Fractional Club membership is still in place at the time of this decision, and it is not possible to relinquish it, as long as Mr and Mrs M agree to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of their Fractional Club membership.

*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr and Mrs M took using their Fractional Points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect their usage.

**HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give Mr M a certificate showing how much tax it's taken off if he asks for one.

My final decision

I direct Clydesdale Financial Services Limited trading as Barclays Partner Finance to calculate and pay fair compensation to Mr M as set out above

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 July 2025.

Chris Riggs
Ombudsman