

The complaint

Mrs A's complaint is, in essence, that Clydesdale Financial Services Limited trading as Barclays Partner Finance (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying claims under Section 75 of the CCA.

Although the timeshare in question was bought jointly by Mr and Mrs A, the loan used for the purchase was taken out in Mrs A's sole name. As such she is the only eligible complainant here. I will, however, refer to both Mr and Mrs A where it is appropriate to do so.

What happened

Mr and Mrs A purchased membership of a timeshare - the European Collection (the 'EC') from a timeshare provider (the 'Supplier') on 13 September 2011 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 3,000 EC points at a cost of £4,800 (the 'Purchase Agreement').

As EC members, every year they could use their points in exchange for holidays at the Supplier's holiday resorts. Different accommodation had different points values, depending on factors such as location, size, and time of year. So, for example, a larger apartment in peak season would cost more to a member in their points than a smaller apartment outside of school holiday periods.

Mrs A paid for their EC membership by taking finance for the purchase price from the Lender (the 'Credit Agreement').

Mrs A – using a professional representative (the 'PR') – wrote to the Lender on 8 December 2021 (the 'Letter of Complaint') to raise a number of different concerns about the EC membership and her associated credit relationship with the Lender. In summary she complained about:

1. Misrepresentations by the Supplier at the Time of Sale giving her a claim against the Lender under Section 75 of the CCA.
2. A breach of contract by the Supplier giving her a claim against the Lender under Section 75 of the CCA.
3. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
4. The decision to lend being irresponsible because the Lender did not carry out the right creditworthiness assessment.

(1) Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

Mrs A says that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. Told them that the EC membership had a guaranteed end date when that was not true.
2. Told them that they were buying an interest in a specific piece of “real property” when that was not true.
3. Told them that EC membership was an “investment” when that was not true.
4. Told them that the Supplier's holiday resorts were exclusive to its members when that was not true.

Mrs A says that she has a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, she has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mrs A.

(2) Section 75 of the CCA: the Supplier's breach of contract

Mrs A says that the Supplier breached the Purchase Agreement because it went into liquidation, and that they found it difficult to book the holidays they wanted, when they wanted.

As a result of the above, Mrs A says that she has a breach of contract claim against the Supplier, and therefore, under Section 75 of the CCA, she has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mrs A.

(3) Section 140A of the CCA: the Lender's participation in an unfair credit relationship

The Letter of Complaint set out several reasons why Mrs A says that the credit relationship between her and the Lender was unfair to her under Section 140A of the CCA. In summary, they include the following:

1. The EC timeshare membership was marketed and sold to them as an investment in breach of regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').
2. They were pressured into purchasing the EC membership by the Supplier.
3. The Supplier's sales presentation at the Time of Sale included misleading actions and/or misleading omissions under the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations') as well as a prohibited practice under Schedule 1 of those Regulations.
4. The decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness assessment.
5. The Supplier failed to provide sufficient information in relation to the EC's ongoing costs and commission arrangements.

The Lender dealt with Mrs A's concerns as a complaint but was unable to issue its final response letter.

The complaint 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.

The PR, on Mrs A's behalf, disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

The provisional decision

I considered the matter and issued a provisional decision (the 'PD') setting out my initial thoughts on the merits of Mrs A's complaint.

In the PD I said:

"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 currently 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.

Mrs A's claims under Section 75 of the CCA

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. It is unclear whether these relevant conditions have been met here, but for the reasons I come on to next, it is unnecessary for me to make a formal finding on this issue.

This is because the Limitation Act 1980 (the 'LA') imposes time limits for people to start legal proceedings – and there are different time limits for different types of claims. Essentially, this means that if someone waits too long to make a claim, the court will usually say it's 'time-barred'. For this reason, if a consumer makes a claim after the relevant time-limit has expired, we will usually say it would be fair for the creditor to rely on the LA to decline the claim.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim a consumer could make against the Supplier.

Misrepresentation

The limitation period to make a claim against the Lender for alleged misrepresentation by the Supplier expires six years from the date on which Mrs A had everything she needed to make such a claim.

As the letter of complaint to the Lender makes clear, Mr and Mrs A made their purchase of the EC membership on 30 September 2011. And Mrs A says they made this purchase based on the alleged misrepresentations of the Supplier, which she says they relied on. And as a loan from the Lender was used to finance the purchase, it was when Mrs A entered into the Credit Agreement that she suffered a loss – which means it was at that time that she had everything she needed to make a claim.

So, Mrs A needed to notify the Lender of her claim by 30 September 2017. But Mrs A first notified the Lender of her claim for alleged misrepresentations by the Supplier on 8 December 2021. As that was more than six years after she entered into the Credit Agreement and related Purchase Agreement, I don't think it would have been unfair or unreasonable of the Lender to rely on the LA to decline the claim. As such I do not think the Lender needs to do anything further in relation to her claim for misrepresentation.

Breach of contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mrs A says that they could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement. And because Mrs A hasn't said exactly when this happened, I am unable to say whether the Lender would likely have had a defence under the LA in a similar way to her claim for misrepresentation. However, I don't think that matters in these circumstances, as I don't think the Lender was unfair when it did not accept the claim.

Like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays for instance. Some of the sales paperwork that was likely to have been signed by Mr and Mrs A states that the availability of holidays was/is subject to demand, and I can see that they have made use of their membership to take holidays on a number of occasions. So, whilst I accept that they may not have been able to take certain holidays, I have not seen enough to persuade me that the Supplier has breached the terms of the Purchase Agreement.

Mrs A also says that the Supplier breached the Purchase Agreement because it went into liquidation. But I cannot see why the PR has made this point as I haven't seen anything which would suggest the Supplier, or a part of it, has been liquidated. In any event, I've not seen anything which, due to a change in the structure of the Supplier, would suggest that Mr and Mrs A are no longer:

1. Members of the EC; and
2. able to use their EC membership to holiday in the same way they could initially.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mrs A any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

Section 75 - conclusion

In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably in not accepting the relevant Section 75 claims, so it does not need to do anything further in this regard.

Section 140A of the CCA: did the Lender participate in an unfair credit relationship?

I've already explained why I'm not persuaded that the Supplier has breached any aspect of the Purchase Agreement. But there are other aspects of the sales process, including the allegation of misrepresentation, that being the subject of dissatisfaction, I must explore with

Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mrs A and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

- 1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale;*
- 2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
- 3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; and*
- 4. The inherent probabilities of the sale given its circumstances.*

I have then considered the impact of these on the fairness of the credit relationship between Mrs A and the Lender.

The Supplier's sales & marketing practices at the Time of Sale

Mrs A's complaint about the Lender being party to an unfair credit relationship was and is made for several reasons.

They include the allegation that the Supplier misled Mr and Mrs A and carried on unfair commercial practices which were prohibited under the CPUT Regulations for the same reasons she gave for her Section 75 claim for misrepresentation. But given the limited evidence in this complaint, I am not persuaded that anything done or not done by the Supplier was prohibited under the CPUT Regulations.

The PR also says that:

- 1. The right checks weren't carried out before the Lender lent to Mrs A; and*
- 2. Mr and Mrs A were pressured by the Supplier into purchasing EC membership at the Time of Sale.*

However, as things currently stand, neither of these strike me as reasons why this complaint should succeed.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mrs A was actually unaffordable, before also concluding that she lost out as a result, and then consider whether the credit relationship with the Lender was unfair to her for this reason. I can see from the account statement that Mrs A met each of the contractual monthly payments as required, and the balance was cleared at the end of the loan's term. So, from the information provided, I am not satisfied that the lending was unaffordable for Mrs A.

And as regards the allegation that Mr and Mrs A were pressured into making the purchase, I acknowledge that they may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase EC membership when they simply did not want to. They were also likely to have been given a 14-day cooling

off period and they have not provided a credible explanation for why they did not cancel their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs A made the decision to purchase EC membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

The PR, on Mrs A's behalf, has said the Supplier made actionable misrepresentations at the Time of Sale. This can be something that could cause an unfairness in the credit relationship between the consumer and the Lender.

They include the suggestion that the EC membership had been misrepresented by the Supplier because Mr and Mrs A were told that they were buying an interest in a specific piece of "real property" when that was not true, and that this was an 'investment'. However, for reasons I will come on to shortly, I cannot see that it is likely that such a representation was made in these circumstances, because the membership sold here had no interest in any property. So I think this allegation is entirely misconceived.

As for the rest of the Supplier's alleged pre-contractual misrepresentations, while I recognise that Mrs A may have concerns about the way in which their EC membership was sold, she has not persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for the other reasons she alleges.

Overall, therefore, I don't think that Mrs A's credit relationship with the Lender was rendered unfair to her under Section 140A for any of the reasons above. But there is another reason why the PR says the credit relationship with the Lender was unfair to her. And that's the suggestion that EC membership was marketed and sold to Mr and Mrs A as an investment in breach of the prohibition against selling timeshares in that way.

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

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling any timeshare membership as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But the PR says that the Supplier did exactly that at the Time of Sale. But I think the PR is mistaken here. I'll explain.

The PR, in the Letter of Complaint, has said that the timeshare Mr and Mrs A bought at the Time of Sale was what was known as a 'fractional' timeshare. This is where the timeshare, in addition to giving holiday rights to the member, is also asset backed. The fractional timeshares had an 'allocated property' that the members 'owned' a fraction of, and at the end of the membership term this property would be sold, and the net proceeds of the sale would be distributed to the fractional owners.

But the membership that Mr and Mrs A bought at the Time of Sale was not a 'fractional' membership – it was membership of the EC, which was not asset backed. It simply provided its members, including Mr and Mrs A, holiday rights that reflected the number of points they held.

If the PR would like to expand on how and why it thinks that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, it can do so in response to this provisional decision.

The provision of information by the Supplier at the Time of Sale

The PR says that Mr and Mrs A were not given sufficient information at the Time of Sale by the Supplier in order to make an informed choice.

It isn't clear what information the PR thinks the Supplier failed to provide at the Time of Sale. But the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

So, while I acknowledge that it is possible that the Supplier did not give Mr and Mrs A sufficient information, in good time, in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'), even if that was the case, neither Mrs A nor the PR have persuaded me that they were deprived of information that would have led them to make a different purchasing decision at the Time of Sale. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why they led to a financial loss.

Mrs A's Commission Complaint

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

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

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

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

- 1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship...was unfair" (see paragraph 327);*
- 2. The failure to disclose the commission; and*
- 3. The concealment of the commercial tie between the car dealer and the lender.*

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

- 1. The size of the commission as a proportion of the charge for credit;*
- 2. The way in which commission is calculated (a discretionary commission arrangement, for*

example, may lead to higher interest rates);

3. The characteristics of the consumer;
4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and
5. Compliance with the regulatory rules.

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

But I don't think *Hopcraft, Johnson and Wrench* assists Mrs A in arguing that her credit relationship with the Lender was unfair to her 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 A, 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 A 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 A.

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 A entered into wasn't high. At £122.40, it was only 2.55% of the amount borrowed and only 3.52% as a proportion of the charge for credit. So, had she 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 she either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mrs A wanted the EC membership and had no obvious means of her own to pay for it. And at such a low level, the impact of commission on the cost of the credit she needed for a timeshare she wanted doesn't strike me as disproportionate. So, I think she would still have taken out the loan to fund her 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 A but as the supplier of contractual rights she 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 her 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 A.

Commission: The Alternative Grounds of Complaint

While I've found that Mrs A's credit relationship with the Lender wasn't unfair to her 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 A's complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mrs A (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 A 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 her. 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 she would still have taken out the loan to fund her purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Overall conclusion

In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably in not accepting the relevant Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with Mrs A under the Credit Agreement that was unfair to her for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate Mrs A."

The responses to the provisional decision

The Lender responded to the PD and accepted it. The PR, on Mrs A's behalf, did not accept it, but provided no further evidence that it wished me to consider.

Having received the relevant responses from both sides, I am now finalising my decision.

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 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

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 sides, I've considered the case afresh. And having done so, and because no new evidence has been submitted or arguments made in response to my initial findings, I see no reason to depart from the outcome as set out in the provisional decision above.

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's Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement that was unfair to her 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 Mrs A.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 20 March 2026.

Chris Riggs
Ombudsman