

## The complaint

The estate of Mr B'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 it 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.

The timeshare in question was bought jointly by the late Mr B and Mrs B and was funded by a loan taken in Mr B's name only. As Mr B sadly died in 2022 this complaint is brought by his estate, but I will refer to both Mr and Mrs B where it is appropriate to do so.

## What happened

Mr and Mrs B were members of a timeshare provider (the 'Supplier') – having purchased a total number of 100,000 'points' over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Infiniti Fractional Club' – which they bought on 14 November 2016 (the 'Time of Sale'). They entered into an agreement with the Supplier to trade in their 100,000 points towards a purchase of 102,000 fractional points at a cost of £11,900 (the 'Purchase Agreement').

Unlike their existing points, the Infiniti Fractional Club membership was asset backed – which meant it gave Mr and Mrs B more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends. The process for the sale of the Allocated Property is due to commence on 31 December 2026.

Mr B paid for their Infiniti Fractional Club membership by taking finance of £11,900 from the Lender (the 'Credit Agreement').

Mr B – using a professional representative (the 'PR') – wrote to the Lender on 18 May 2022 (the 'Letter of Complaint') to raise a number of different concerns about the Infiniti Fractional Club and the associated Credit Agreement. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender did not send a substantive response to the complaint, so on 14 March 2023 the PR, now acting on behalf of Mr B's estate, referred the complaint to the Financial Ombudsman Service.

As part of the PR's submissions, it sent a statement from Mrs B, dated 22 March 2021. This set out her recollections of her and Mr B's relationship with the Supplier. As far as is relevant to the Time of Sale she said:

*"In November 2016 we were on holiday in Tenerife. While we were at the resort, we were invited to come along and have a catchup with the reps on site. These meetings would always last for several hours. While we were there, the rep began telling us about an amazing offer they had on that day, and this was for us to purchase these fractional*

*points. I cannot recall what we were promised when it came to selling these fractions, but we were led to believe that we would be purchasing a share of an apartment. So, we would be part owners. We did feel under pressure to make this purchase. We were told that this offer was for that day only, so we couldn't go away and think about it, we had to decide there and then."*

The complaint was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

The estate of Mr B 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 the estate of Mr B'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.*

### Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

*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. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.*

*It was said in the Letter of Complaint that Infiniti Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mrs B and the late Mr B were:*

- (1) Told by the Supplier that Infiniti Fractional Club membership had a guaranteed end date when that was not true.*
- (2) Told by the Supplier that Infiniti Fractional Club membership was an "investment" when that was not true.*
- (3) Told that the points would offer better availability and in a higher standard of accommodation when that was not true.*

*However, telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. After all, a*

share in an allocated property was, by its very nature, an investment. And while, as I understand it, the sale of the Allocated Property could be postponed in certain circumstances according to the Infiniti Fractional Club Rules, I've seen little to nothing to persuade me that Mr and Mrs B were given a guarantee by the Supplier that the Allocated Property would be sold on a specific date when such a promise would have been impossible to stand by given the inevitable uncertainty of selling property some way into the future. And as there's nothing else on file to support the PR's allegation, I'm not persuaded that there was a representation by the Supplier on the issue in question that constituted a false statement of fact.

And I also cannot see that telling a prospective purchaser that additional points would improve the availability of holidays is factually untrue.

So, while I recognise that the estate of Mr B and the PR have concerns about the way in which the Infiniti Fractional Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

#### Section 75 of the CCA: the Supplier's 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.

The estate of Mr B says that Mr and Mrs B 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.

Yet, 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 likely to have been signed by Mr and Mrs B states that the availability of holidays was/is subject to demand. 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 had breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay the estate of Mr B 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 140A of the CCA: did the Lender participate in an unfair credit relationship?

I've already explained why I'm not persuaded that Infiniti Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale, nor that the terms of the Purchase Agreement have been breached. But there are other aspects of the sales process 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 Mr B (and now his estate) 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 evidence provided by Mrs B as to what she remembers about the Time of Sale; and:

1. *What I know about the standard of the Supplier's commercial conduct;*
2. *The provision of information by the Supplier at the Time of Sale, including the contractual documentation; and*
3. *The inherent probabilities of the sale given its circumstances.*

*I have then considered the impact of all of this on the fairness of the credit relationship between the estate of Mr B and the Lender.*

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

*Mr B's (and now his estate's) complaint about the Lender being party to an unfair credit relationship was and is made for several reasons.*

*The PR says, for instance that:*

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

*However, as things currently stand, neither of these strike me as a reason 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 Mr B was actually unaffordable, before also concluding that he (and by association his estate) lost out as a result, and then consider whether the credit relationship with the Lender was unfair to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr B.*

*And as regards the allegation that Mrs B and the late Mr B were pressured into the purchase, I acknowledge that they may have felt weary after a sales process that went on for a long time. But in her statement Mrs B says 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 the Infiniti Fractional Club membership when they simply did not want to. I can see they were also given a 14-day cooling off period and neither the estate of Mr B or Mrs B in her statement have 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 B made the decision to purchase the Infiniti Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.*

*Overall, therefore, I don't think that Mr B's (and now the estate of Mr B's) credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR now says the credit relationship with the Lender was unfair to them. And that's the suggestion that the Infiniti Fractional Club membership was marketed and sold to Mr and Mrs B as an investment in breach of prohibition against selling timeshares in that way.*

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

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs B the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that the Infiniti Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

In other words, the Timeshare Regulations did not ban products such as the Infiniti Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Infiniti Fractional Club membership was marketed or sold to Mr and Mrs B as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Infiniti Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

But I am not persuaded that the way the membership was sold to Mr and Mrs B was in breach of the relevant prohibition.

I understand from what Mrs B has said in her statement that the membership was presented as an opportunity to buy a share in an apartment, but that, as I have explained, does not breach Regulation 14(3) of the Timeshare Regulations. I would need to be persuaded that the membership was sold and/or marketed to Mr and Mrs B as something that could provide them with a profit, and what Mrs B has said doesn't persuade me that was the case.

I have also looked at the contractual documentation from the sale. Here too there appears to be little reference to any profitable financial return on the sale of the Allocated Property. Indeed, in the 'Key Information' section of documentation, where setting out that the freehold title of the Allocated Property is held by independent trustees, it says:

"You must bear in mind that you're Infinity Fractional Rights (and the purchase price paid by you for those Infinity Fractional Rights) relates primarily to the acquisition by you of many years of wonderful holidays."

So, from what I can see, I am not currently satisfied that the Infiniti Fractional Club membership was sold and/or marketed to Mr and Mrs B in a way that breached Regulation 14(3) of the Timeshare Regulations. But even if I am wrong about that, and the sale did breach the relevant prohibition, I don't think it would change the outcome to this complaint in any event. I'll explain.

Would the credit relationship between the Lender and Mr B (and now his estate) have been rendered unfair to them had there been a breach of Regulation 14(3) of the Timeshare Regulations?

As I've said, I am not currently persuaded that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale. But if I am wrong about that, and the Supplier did breach the relevant prohibition, I would need to consider what impact that breach had on the fairness of the credit relationship between Mr B (and now his estate) and the Lender under the Credit Agreement and related Purchase Agreement. This is because 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.*

*Indeed, it seems to me that, if I were to conclude that a breach of Regulation 14(3) led to a credit relationship between the estate of Mr B and the Lender that was unfair to it and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led Mr B to enter into the Purchase Agreement and the Credit Agreement is an important consideration.*

*But on my reading of the evidence before me, the prospect of a financial gain from the Infiniti Fractional Club membership was not an important and motivating factor when Mr and Mrs B decided to go ahead with their purchase. I am simply not persuaded that was the case.*

*There is no suggestion in what Mrs B has said in her statement that they were motivated by a potential profit from the membership at the end of its term. Indeed, Mrs B says she cannot remember what they were told about the sale of the Allocated Property which I find surprising if, as the PR now attests, it was bought as a vehicle to make a profit. After all, the sale of the Allocated Property was a crucial part of the membership if it was bought as an investment. It seems to me that if Mrs B can't remember what they were told about the future sale of the property, that can't have been of much interest, and it is more likely it was the additional holiday rights the extra points would provide that was the reason they went ahead and made the purchase.*

*So, as I am not persuaded that Mrs B and the late Mr B's purchase of the Infiniti Fractional Club membership 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 (if one occurred) was likely to have been material to the decision they ultimately made.*

*On balance, therefore, even if the Supplier had marketed or sold the Infiniti Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations (and as I've said, I don't think it did) I am not persuaded that Mr and Mrs B's decision to purchase the Infiniti Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchase anyway. And for that reason, I do not think the credit relationship between the estate of Mr B and the Lender is unfair to it even if the Supplier had breached Regulation 14(3) at the Time of Sale.*

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

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*The PR says that Mrs B and the late Mr B 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 as I've already indicated, 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 B 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 B, Mr B's estate or 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.*

## *The estate of Mr B's Commission Complaint*

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*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 the estate of Mr B in arguing that its credit relationship with the Lender was unfair to it 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 B and the late Mr B, 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 the late Mr B 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 the estate of Mr B.*

*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 B and the late Mr B 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 the late Mr B when arranging the Credit Agreement and thus a fiduciary duty.*

*What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, the Lender didn't pay the Supplier any commission at the Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), 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 the late Mr B (and now his estate).*

## *Conclusion*

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*In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with the late Mr B (and now the estate of Mr B) under the Credit Agreement that was unfair 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 Mr B's estate."*

## **The responses to the provisional decision**

Both the PR and the Lender responded to the PD but neither had anything further to add.

Having received the relevant responses from both sides and as the deadline for submissions has passed, 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 the late Mr B's Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with the estate of Mr B under the Credit Agreement that was unfair to it 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 the estate of Mr B.

## **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr B to accept or reject my decision before 17 February 2026.

Chris Riggs  
**Ombudsman**