DRN-4908350

The complaint

Mr H'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 unfair credit relationships with him 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.

Both of the loans that are the subject of this complaint were taken out in Mr H's name only and he is therefore the only eligible complainant here. But as the timeshares purchased using the loans were bought in the joint names of Mr H and Ms H, I'll refer to them both throughout where appropriate.

What happened

Mr H purchased membership of a timeshare on two occasions:

- 1,200 Fractional Club membership points on 22 March 2017 for £10,338 ('Purchase Agreement 1')
- 2,200 Signature Collection points on 15 October 2017 for £12,119 ('Purchase Agreement 2')

(which, when appropriate, I'll simply refer to as the ''Purchase Agreements')

As this complaint is concerned with the purchases on dates, those are the 'Times of Sale' for the purposes of my decision.

Fractional Club and Signature Collection membership were asset backed – which meant they gave Mr H more than just holiday rights. They also included a share in the net sale proceeds of a property named on the relevant purchase agreement (which I'll refer to as the 'Allocated Property 1 and 2' or, when appropriate, the 'Allocated Properties') after their membership term ends.

Mr H paid for their Fractional Club and Signature Collection points by taking the following amounts of finance from the Lender:

- £10,338 on 22 March 2017 ('Credit Agreement 1')
- £12,119 on 15 October 2017 ('Credit Agreement 2')

(which, when appropriate, I'll simply refer to as the ''Credit Agreements')

Mr H – using a professional representative (the 'PR') – wrote to the Lender on 8 November 2021 (the 'Letter of Complaint') to raise a number of different concerns. 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 dealt with Mr H's concerns as a complaint and ultimately issued its final response letter on 6 March 2024, rejecting it on every ground.

The complaint was referred to the Financial Ombudsman Service.

The Investigator's view

Mr H's complaint was assessed by an Investigator at this Service who did not think it ought to be upheld. In summary, they said:

- They considered the entirety of the credit relationships, including the Supplier's sales and marketing practices, the relevant terms in the Purchase Agreements and disclosure of information at the Times of Sale. And having done so, they couldn't see any reason suggesting that the credit relationships between Mr H and the Lender were unfair under S140A of the CCA. They also said that based on the evidence provided (including Mr H and Ms H's testimony), they were not persuaded that, even if the membership(s) had been sold as an investment in breach of Regulation 14(3), this was material to Mr H's purchasing decisions. So, they didn't think either of the credit relationships were unfair to Mr H for this reason either.
- They did not think there was sufficient evidence that either the Fractional Club membership or Signature Collection membership were misrepresented at the Times of Sale.
- They couldn't see that the lending was unaffordable for Mr H.
- They hadn't seen anything to suggest that the credit broker did not hold the relevant authorisation at the Times of Sale to broker credit, or that Spanish law could be directly applied to the Purchase Agreements in question. So, they couldn't see these were reasons to uphold the complaint either.

Mr H, and the PR, disagreed with the Investigator's assessment and asked for an Ombudsman's decision, providing some further comments they wished to be considered.

The second Investigator's view

Mr H's complaint was then assessed afresh by a second Investigator at this Service who also did not think it ought to be upheld. They expanded on the reasons for reaching this conclusion saying, in summary:

- They noted that the PR's response to the initial view was limited to the issue of whether there was a breach of Regulation 14(3) of the Timeshare Regulations at the Times of Sale. Since the PR had not challenged any of the previous Investigator's conclusions regarding all of the other points originally raised, they proceeded on the basis that those other matters were no longer being disputed.
- They said there was competing evidence in this complaint as to whether the memberships in question were marketed or sold to Mr H as an investment. They said on the one hand, it's clear the Supplier made efforts to avoid specifically describing membership as an 'investment' or giving details of the amount a prospective purchaser, such as Mr H, might expect to get back at the end of their membership term. They also acknowledged that there were disclaimers in the sales documents that went some way to saying that the memberships weren't to be seen by Mr H as an investment. So, they said it's possible that the memberships weren't marketed or sold to him as an investment.
- But on the other hand, the Investigator acknowledged that the Supplier's training material left open the possibility that the sales representatives may have positioned

the memberships as an investment. So, they accepted that it's equally possible that the memberships were marketed and sold to Mr H as an investment in breach of Regulation 14(3).

- But the Investigator said they didn't think whether Regulation 14(3) was actually breached made a difference to the outcome in this case. They explained that in order for them to conclude that such breach(es) led to credit relationship(s) that were unfair to Mr H, they also had to consider whether any such breach led him to enter into the Purchase Agreements and Credit Agreements.
- The Investigator considered Mr H's testimony and what he'd said about the Times of Sale. They didn't find any reason to doubt the credibility of the witness statement, but they weren't persuaded by what Mr H had to say within this statement that either of his purchases were motivated by the prospect of a financial gain or profit.
- They explained that in relation to the Time of Sale 1, Mr H's recollections only appeared to represent a factual description of how the membership worked, rather than any promise by the salesperson of a financial gain or profit. And, they also said that Mr H indicated in his testimony that he was induced into this purchase due to the information given around usage of points, upgrades, different countries and discounts i.e. the holidays the membership could provide.
- In relation to the Time of Sale 2, the Investigator highlighted that Mr H indicated in his testimony that he purchased this membership on the basis of more points, a set week, extra discounts and upgrades and the offer of a better apartment.
- So, the Investigator felt based on the testimony provided, it was more likely, on balance, that Mr H had purchased both memberships for the holidays they could provide, rather than because of the prospect of a financial gain or profit as a result of what he was told by the salespeople at the Times of Sale.
- The Investigator therefore concluded that the credit relationships weren't, in their view, unfair to Mr H even if the Supplier had breached Regulation 14(3) at either or both of the Times of Sale.
- Overall, they didn't feel the credit relationships were unfair to Mr H under Section 140A of the CCA. And they hadn't seen any other reason to uphold the complaint either.

The Lender did not respond. Mr H, and the PR, disagreed with the second Investigator's assessment, provided some further comments and again asked for an Ombudsman's decision – which is why it has been passed to me.

The legal and regulatory context

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

The legal and regulatory context that I think is relevant to this complaint is, 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:

<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 3.7.3 [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.

And having done so, I've reached the same outcome as the Investigator, for broadly the same reasons.

I'd like to firstly outline that 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.

The PR's further comments in response to the Investigator's views only relate to the issue of whether the credit relationships between Mr H and the Lender were unfair. In particular, the PR has provided further comments in relation to whether the memberships were sold to Mr H and Ms H as an investment at the Times of Sale. They've also now argued for the first time that the payment of a commission by the Lender to the Supplier led to unfair credit relationships along with contradictions they say were present in the sales paperwork in relation to the sale date of the Allocated Property 2.

As outlined by the Investigator, the PR originally raised various other points of complaint, all of which they addressed. But the PR didn't make any further comments in relation to those in their response to the Investigator's view. Indeed, they haven't said they disagree with any of the Investigator's conclusions in relation to those other points. And since nothing more has been provided in relation to those other points by either party, I see no reason to reach a different conclusion to the Investigator on those other points. So, I'll focus here on the 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(es) of Regulation 14(3) of the Timeshare Regulations

As the Investigator already explained, in relation to the Time of Sale 1, Mr H's recollections only appeared to represent a factual description of how the membership worked, rather than

any promise by the salesperson of a financial gain or profit. And, they also said that Mr H indicated in his testimony that he was induced into this purchase due to the information given around usage of points, upgrades, different countries and discounts i.e. the holidays the membership could provide. In relation to the Time of Sale 2, the Investigator highlighted that Mr H indicated in his testimony that he purchased this membership on the basis of more points, a set week, extra discounts and upgrades and the offer of a better apartment. So, the Investigator felt based on the testimony provided, it was more likely on balance that Mr H had purchased both memberships for the holidays they could provide, rather than because of the prospect of a financial gain or profit as a result of what he was told by the salespeople at the Times of Sale.

Having reviewed everything afresh, including the testimony provided by Mr H, like the Investigator, for all of the reasons already explained I am also not persuaded that the evidence suggests that Mr H purchased the memberships in whole or in part down to any breach of Regulation 14(3).

I agree with the PR that just because a purchaser was also interested in taking holidays with the Supplier, that does not preclude them also being motivated to take out Fractional Club or Signature Collection membership by any investment element – indeed I would find it surprising if any members were not interested in taking holidays, given the nature of the products. However, for the reasons set out previously and in this decision, I do not find any such investment motivation.

In my view, the PR's submissions seem to be conflating the issue of whether there was a breach of Regulation 14(3) at the Times of Sale and whether this was material to Mr H's purchasing decisions. And, they appear to be suggesting that if there was a breach of Regulation 14(3) at the Times of Sale, this is sufficient reason in and of itself to uphold this complaint. But I don't agree with that – as previously explained, the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision.

And, for all of the reasons already explained, I'm simply not persuaded that any such breach by the Supplier at the Times of Sale was material to Mr H's purchasing decisions.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*[1], it was not challenged that the product in question was marketed and sold as an investment. But, the Timeshare Regulations did not ban products such as the Fractional Club or Signature Collection. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances. So just because the complaints that were subject to judicial review were upheld, it does not follow I must (or should) also uphold Mr H's complaint.

So again, even if the Supplier had marketed or sold either or both of the memberships as an investment in breach of Regulation 14(3) (which I also make no finding on here), I'm not persuaded Mr H's decisions to make the purchases were motivated by the prospect of a financial gain. So, I don't think the credit relationships between Mr H and the Lender were unfair to him for this reason.

<u>The provision of information by the Supplier at the Times of Sale</u>

[1] *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*').

The PR says that a payment of commission from the Lender to the Supplier at the Times of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Times 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 Cort 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 Mr H in arguing that his credit relationships with the Lender were unfair to him 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 Mr H, 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 Mr H 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 Times of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But as has been explained 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 Times of Sale, it is for the reasons set out below that I don't think any such failure is itself a reason to find the credit relationships in question unfair to Mr H.

Based on what I've seen, 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 Agreements. And as it wasn't acting as an agent of Mr H but as the supplier of contractual rights he obtained under the Purchase Agreements, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to him when arranging the Credit Agreements 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 either of the Times 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 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 relationships unfair to Mr H.

I will also address the PR's point regarding the apparent ambiguity in the proposed sale date of the Allocated Property 2. The PR suggests that a delayed sale date could lead to an unfairness to Mr H in the future, as any delay could mean a delay in the realisation of his share in the Allocated Property 2.

It does appear that the proposed date for the commencement of the sales process, as set out on the owners' certificate, is 31 December 2034. I'm aware this same date was generally set out under point 1 of the Members Declaration, which consumers like Mr H had to initial and sign to confirm they had read. This date indicates that the membership has a term of 17 years. The ambiguity identified by the PR is that in the Information Statement provided as part of the purchase documentation it says the following:

> "*The Owning Company will retain such Allocated Property until the automatic sale date in **19 years time** or such later date as is specified in the Rules or the Fractional Rights Certificate.*" (bold my emphasis).

It seems clear to me that the commencement date for the start of the sales process is 31 December 2034. This date was generally repeated in the sales documentation as I've set out above.

So, I can't see that this is a reason to find the credit relationship 2 unfair and uphold this complaint.

S140A conclusion

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationships between Mr H and the Lender under the Credit Agreements and related Purchase Agreements were unfair to him. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

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 Mr H's Section 75 claims, and I am not persuaded that the Lender was party to credit relationships with him under the Credit Agreements that were unfair to him 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 him.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 March 2026.

Fiona Mallinson
Ombudsman