DRN-5274515

The complaint

Mr 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 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.

Background to the complaint

Mr and Mrs A were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. One of the products relevant to this complaint is their membership of a timeshare that I'll call the 'Fractional Club'. They purchased the following products on the dates below:

- a trial membership on 28 August 2009 for £3,995 ('Purchase Agreement 1');
- full membership on 28 April 2010 for £10,204 ('Purchase Agreement 2');
- 1,700 points of a different timeshare on 20 April 2011 for £26,557:96 – but after trading in their first lot of points, they ended up paying £9,200 ('Purchase Agreement 3');
- 2,241 fractional points on 28 October 2011 for £11,606 – having traded in their previous 1,700 points ('Purchase Agreement 4');
- 2,898 fractional points on 8 April 2013 for £9,675 – having traded in the first lot of 2,241 fractional points ('Purchase Agreement 5')

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

As this complaint is concerned with the purchases on 28 August 2009, 28 April 2010 and 8 April 2013, those are the 'Time of Sale' for the purposes of my decision.

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

Mr A paid for their first, second and fifth purchases by taking the following amounts of finance from the Lender in his sole name:

- £3,645 on 28 August 2009 ('Credit Agreement 1'), after paying a deposit of £350;
- £13,501 on 28 April 2010 ('Credit Agreement 2'), which consolidated the previous loan (and was in turn consolidated by a loan Mrs A took on 20 April 2011);
- £9,675 on 8 April 2013 ('Credit Agreement 5')

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

As that makes him the only eligible complainant in respect of those loans and purchases under our rules, Mrs A's two loans are the subject of a separate complaint.

(Mr and Mrs A subsequently went on to buy more fractional points in 2014 and 2015, but those purchases are not the subject of either complaint.)

Mr and Mrs A – using a professional representative (the 'PR') – wrote to the Lender on 12 April 2017 (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 and Mrs A's concerns as a complaint and issued its final response letter on 4 May 2017, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. We then treated it as two complaints. Mr A's complaint was assessed by an investigator who, having considered the information on file, rejected his complaint on its merits.

Mr A disagreed with the investigator's assessment and asked for an ombudsman's decision – which is why it was passed to me.

I issued my provisional decision on 26 March 2026. I made the following provisional findings (which form part of this final decision):

> **My provisional findings**
>
> I have considered all the available evidence and arguments to decide what is 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.
>
> **My jurisdiction**
>
> Under the rules of the Financial Ombudsman Service, a complaint about unfairness under section 140A has to be brought within six years of when the credit relationship ended. Credit Agreement 1 came to an end in 2010, so I cannot consider it in its own right. But I can still take into account evidence about it when I consider Credit Agreement 2 (which is within our jurisdiction), because it was consolidated by Credit Agreement 2, which makes it a 'related agreement' under section 140A(1) and section 140C(4)(a). So I can still consider evidence about what happened on 28 August 2009.
>
> **Section 75 of the CCA: the Supplier's misrepresentations at the Times 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.

Under the Limitation Act 1980, a claim for misrepresentation must be brought within six years of the misrepresentation. The Letter of Complaint was sent more than six years after the 2009 and 2010 Times of Sale, so I'm satisfied that the Lender had a complete defence to those claims. But the claim about the 2013 sale was brought in time.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier in 2013 because Mr A was told or led to believe by the Supplier that Fractional Club membership:

(1) was an investment that could be sold at a profit when that was not true;

(2) had a guaranteed end date when that was not true;

(3) was the only way of releasing himself from his existing membership when that was not true;

(4) was exclusive to them (and other members) when that was not true.

However, telling prospective members that Fractional Club membership was an investment that could be sold at a profit was not untrue. After all, a share in an allocated property was, by its very nature, an investment and it was and is *possible* that it will be sold at a profit.

As I understand it, the sale of the Allocated Properties could be postponed in certain circumstances according to the Fractional Club Rules. But Mr A says little to nothing to persuade me that he was given a guarantee by the Supplier that the Allocated Properties 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 isn't enough evidence on file to support the PR's allegation that Fractional Club membership had been misrepresented for reasons relating to points (3) and (4), I'm not persuaded that there were representations by the Supplier on the issues in question that constituted false statements of existing fact.

So, while I recognise that Mr A and the PR have concerns about the way in which 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

The PR says, on Mr A's behalf, that holiday accommodation would be secured thanks to Fractional Club membership when that was not true. And on my reading of the complaint, that suggests that he could not holiday where and when he wanted to, potentially breaching the Purchase Agreements.

However, 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 A states that the availability of holidays

was/is subject to demand. It also looks like he made use of his fractional points to holiday on a number of occasions. I accept that he may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreements.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr 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 140A of the CCA: did the Lender participate in one or more unfair credit relationships?

The PR says that Mr A's credit relationships with the Lender were unfair because:

1. the right affordability checks weren't carried out before the Lender lent to Mr A;
2. Mr and Mrs A[1] were pressured by the Supplier into purchasing Fractional Club membership at the Times of Sale;
3. there were unfair contract terms in the Purchase Agreements; and
4. Fractional Club membership was marketed and sold as an investment in breach of a regulatory prohibition on doing so.[2]

However, having considered the entirety of the credit relationships between Mr A and the Lender along with all of the circumstances of the complaint, I don't think the credit relationships between them were 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 Times of Sale, along with any relevant training material;
2. The provision of information by the Supplier at the Times 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 Times of Sale;
4. The inherent probabilities of the sales given their circumstances; and, when relevant,
5. Any existing unfairness from a related credit agreement.

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

The Supplier's sales and marketing practices at the Times of Sale

While the PR says that the right affordability checks weren't carried out at the Times of Sale, 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 A was actually unaffordable before also concluding that he lost out as a result and then consider whether the credit relationship with the Lender was unfair to him for this reason. But from the information provided, I am not satisfied that

[1] A credit relationship can be unfair under section 140A because of things done or said to a party to the related purchase agreement, which includes Mrs A. (See sections 19 and 140C(4)(b) of the CCA.)
[2] Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').

the lending was unaffordable for Mr A. I have also seen evidence of Mr A having been asked questions about his finances at the Times of Sale, including his gross income and the fact that his mortgage was fully paid off.

I acknowledge that Mr A may have felt weary after a sales process that went on for a long time. But he says little about what was said and/or done by the Supplier during their sales presentations that made him feel as if he had no choice but to purchase Fractional Club membership when he simply did not want to. He was also given a 14-day cooling off period and he has not provided a credible explanation for why he did not cancel his membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr A made the decision to purchase Fractional Club membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

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

The Lender does not dispute, and I am satisfied, that Mr and Mrs A's Fractional Club membership (Purchase Agreement 5) met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club 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 2013 Time of Sale.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs A 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 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 Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs A 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 Fractional Club membership offered them the prospect of a financial gain – *i.e.*, a profit – given the facts and circumstances of *this* complaint.

There is competing evidence in this complaint as to whether Fractional Club

membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs A, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr and Mrs A as an investment in breach of regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Would the credit relationship between the Lender and Mr A have been rendered unfair to him had there been a breach of regulation 14(3) of the Timeshare Regulations?

Having found that it was possible that the Supplier breached regulation 14(3) of the Timeshare Regulations at the Times of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr A and the Lender under Credit Agreement 5 and the related Purchase Agreement, as 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 am to conclude that a breach of regulation 14(3) led to a credit relationship between Mr A and the Lender that was unfair to him and warranted relief as a result, then an important consideration is whether the Supplier's breach of regulation 14(3) led him to enter into Purchase Agreement 5 and Credit Agreement 5.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mr and Mrs A decided to go ahead with their purchase. In their joint witness statement, they say the following about the 2013 sale:

"We were told that a property in Tenerife would have a better return at the end of the contract as Tenerife properties are worth more as they are an all year-round resort."

And they say the following about the Fractional Club in general:

"The money we were paying to [the Supplier] *would no longer* [be] *going into a bottomless pit and we were told … would be returned to us in x years' time when the apartments which we "owned" in part were sold."*

"…another benefit of Fractions was perceived ease to book what we wanted and to have our investment back at market level in the future."

While each of those statements refers to getting some money back, none of them sets out the expectation of making a profit.

That doesn't mean they weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs A themselves don't persuade me that their purchase 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 was likely to have been material to the decision they ultimately made.

So on balance, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of regulation 14(3), I am not persuaded that Mr and Mrs A's decision to purchase 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 whether or not there had been a breach of regulation 14(3). And for that reason, I do not think the credit relationship between Mr A and the Lender was unfair to him even if the Supplier had breached regulation 14(3).

The provision of information by the Supplier at the 2013 Time of Sale

The PR says that Mr and Mrs A were not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership. The PR also says that, because some of the terms of the Purchase Agreements weren't individually negotiated, they were unfair contract terms as were the terms governing the ongoing costs of membership and consequences of non-payment.

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.

I acknowledge that it is also possible that the Supplier did not give Mr and Mrs A sufficient information, in good time, on the various charges they could have been subject to as Fractional Club members in order to satisfy the requirements of regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mr and Mrs A nor the PR have persuaded me that they would not have pressed ahead with their purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mr and Mrs A in practice, nor that any such terms led them to behave in a certain way to their detriment. And with that being the case, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy even if they could be said to be unfair contract terms, which I make no formal finding on.

Commission

The PR also says that payments 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 those payments 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 undisclosed 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 Mr A 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.

As the Supreme Court said in paragraph 326 of its judgment in *Hopcraft, Johnson and Wrench,* it's not possible to simply apply the reasoning of the Supreme Court in *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61 ('*Plevin*') to this complaint (as the PR does) when it's concerned with a product and marketplace that were very different to those in *Plevin*. What's more, Mr A was provided with information as to the price of Fractional Club membership and the cost of the Credit Agreements (interest rate, fees, APR and monthly repayments). So, he was at least in a position from which he could understand the cost of the Credit Agreements and compare them with other options that might have been available at the Times of Sale.

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 A, nor have I seen anything that persuades me that the commission arrangements between them gave the Supplier a choice over the interest rate that led Mr A into credit agreements that cost disproportionately more than they 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 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 Times 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 relationships in question unfair to Mr A.

In stark contrast to the facts of Mr Johnson's case, the amounts of commission paid by the Lender to the Supplier for arranging the Credit Agreements that Mr A entered into were not high. The commission paid on Credit Agreement 5 was £967:50, which was only 10% of the amount borrowed and even less than that (5.88%) as a proportion of the charge for credit, which is the calculation the Supreme Court used. So, had Mr A 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 he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr A wanted Fractional Club membership and had no obvious means of his own to pay for it. And at such a low level, the impact of commission on the cost of the credit he needed for a timeshare he wanted doesn't strike me as disproportionate. So, I think he would still have taken out that loan to fund his purchase had the amount of commission been disclosed.

Credit Agreements 1 and 2 were so long ago that the Lender no longer has data about the commission payments, which I do not think is unreasonable, and I don't think I could fairly uphold this complaint based solely on commission payments without knowing how much they were. But it seems unlikely that they would have been much higher than the commission which was paid on Credit Agreement 5, because the Financial Ombudsman Service has seen thousands of complaints about timeshares and we have yet to see commission payments on a scale that

approaches what the Supreme Court was dealing with in *Hopcraft, Johnson and Wrench*.

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 Agreements. And as it wasn't acting as an agent of Mr A but as the supplier of contractual rights he obtained under the Purchase Agreements, the transactions don't strike me as ones with features that suggest the Supplier had an obligation of 'loyalty' to him when arranging the Credit Agreements 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 relationships unfair to Mr A.

Section 140A: 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 A and the Lender under the Credit Agreements and related Purchase Agreements were unfair to him. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

Commission: The alternative grounds of complaint

While I've found that Mr A's credit relationships with the Lender weren't unfair to him 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 Mr A's complaint about unfair credit relationships. 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 payments of commission from the Lender without telling Mr A (*i.e.*, secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the Times 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 Mr 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 him. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Times 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 he would still have taken out the loans to fund his purchases at the Times of Sale had there been more adequate disclosure of the commission arrangements that applied at those times.

Overall 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 A's section 75 claims.

I am not persuaded that the Lender was party to credit relationships with him under the Credit Agreements and the related Purchase 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.

Responses to my provisional decisions

The Lender accepted my provisional decision. The PR disagreed with my overall conclusion. It provided submissions which, while primarily concerned with the suggestion that Mr A's Fractional Club membership had been marketed and sold as an investment in contravention of a prohibition on selling timeshares in that way, also included allegations of fraudulent misrepresentation on the basis that he was told by the Supplier at the Time of Sale that:

(1) he was buying part ownership of a physical property;

(2) Fractional Club membership was an investment;

(3) the Allocated Property would be sold; and

(4) he would receive a share of the net proceeds of sale when the Allocated Property is sold.

The PR also repeated its concerns about the pressure Mr A was put under by the Supplier at the Time of Sale, the Lender's decision to lend being irresponsible, unfair terms about annual maintenance fees, and payment of commission to the Supplier by the Lender – albeit with a focus on the Supreme Court's judgment in *Hopcraft v Close Brothers Limited; Johnson v FirstRand Bank Limited; Wrench v FirstRand Bank Limited* [2025] UKSC 33 ('*Johnson'*).

The PR argued that the section 75 claims in relation to the 2009 and 2010 loans were not time-barred under the Limitation Act. It said that under section 32 of that act, the time limits were extended because the Supplier and / or the Lender had deliberately concealed material facts. It said that I should consider those claims on their merits.

As a result, the complaint was passed back to me for further thought and my final decision.

The legal and regulatory context

The legal and regulatory context that I think is relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in previous correspondence with the parties. So, there's no need for me to set this out again in detail here. I simply remind the parties that our rules[3] say that in considering what is fair and reasonable in all the circumstances of the complaint, I will take into account, where relevant: (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (when appropriate), what I consider to have been good industry practice at the relevant time.

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.

[3] Specifically Rule 3.6.4 in the Dispute Resolution Rules found in the Financial Conduct Authority's Handbook for Rules and Guidance.

And having done that afresh, I'm not persuaded to depart from my provisional decision, for reasons I'll now explain.

Before I do, I want to make it clear that I recognise that this complaint, when originally made, was wide ranging and made on a number of different grounds, including:

(1) Misrepresentations by the Supplier at the Time of Sale, giving Mr A a claim against the Lender under section 75 of the CCA, which the Lender failed to accept and pay.

(2) A breach of contract by the Supplier, giving Mr A a claim against the Lender under section 75 of the CCA, which the Lender failed to accept and pay.

(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.

However, as the PR's more concise response to my provisional decision relates, in the main, to points (1) and (3), if I haven't been provided with new arguments and/or evidence to consider in relation to (2), I see no reason to change or add to my conclusions (as set out in the summary of my provisional decision above) in relation to them.

Indeed, as I said in my provisional decision, my role as an ombudsman is to decide what's fair and reasonable in the circumstances of this complaint – rather than address every single point that's been made. And with that being the case, while I have read all of the PR's submissions in full, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

What's more, it is important to make the point that, in contrast to what might happen in court, neither side to this complaint has a burden of proof that it must discharge. After all, the jurisdiction under which I'm deciding this complaint is inquisitorial rather than adversarial – which means that my findings are made, on the balance of probabilities, in light of the evidence and/or arguments received from both sides.

So, while the PR argues in response to my provisional decision that, under section 140B(9) of the CCA, it is for the Lender to prove that its credit relationship with Mr A wasn't unfair simply because he alleges that it was, that fails to understand that the Financial Ombudsman Service deals with complaints rather than causes of action. And, in any event, to suggest that unsubstantiated allegations of fact must be disproved by the Lender if the credit relationship isn't to be deemed unfair also oversimplifies if not misunderstands the legal position. As HHJ David Cooke said in paragraph 26 of his judgment on *Promontoria (Henrico) Ltd v. Gurcharn Samra* [2019] EWHC 2327 (Ch):

"…the onus is on [the creditor] *to show, to the normal civil standard, that the relationship is not unfair because of any of the reasons set out in s 140A(1)(a)-(c). Whether it is so unfair is a matter for the court's overall judgment having regard to all the relevant circumstances and matters, including matters relating (i.e. personal) to the creditor and debtor. This onus on the claimant does not however mean, in my judgement…that where* [the borrower alleging an unfair credit relationship] *makes allegations of fact on which he relies he does not have the burden of proving them to the normal civil standard. The onus placed on the creditor is as to the relationship between it and the debtor, and does not have the effect that factual allegations made by Mr Samra must be accepted unless they can be positively disproved by contrary evidence."* [4]

[4] As approved by the Supreme Court in *Smith v. The Royal Bank of Scotland plc* [2023] UKSC 34 – see paragraph 40.

Section 75 of the CCA: the Supplier's misrepresentations at the 2013 Time of Sale

It was argued by the PR, when this complaint was first made, that the Supplier misrepresented Fractional Club membership at the Times of Sale. The reasons for this aspect of this complaint at that time were addressed in my provisional decision in relation to the 2013 sale. And I see no reason to change or add to those. But in response to my provisional decision, the PR argues that Fractional Club membership was worthless and, as such, various representations by the Supplier (which I have set out above) were fraudulent, in that they promised that Mr A would make a profit when he received his share of the proceeds of the sale of the Allocated Property, which might never happen.

The PR takes that view because it says the evidence suggests that (1) any rights in the Allocated Property are personal rights rather than the rights of ownership, (2) the Lender hasn't provided any evidence that the Allocated Property exists or that it will sell in the future (making it unlikely that Mr A will receive anything from his share in it), and (3) by the PR's own calculations, given the initial and ongoing costs of Fractional Club membership, it was never possible to make a profit from the sale of the Allocated Property.

The law relating to misrepresentation is a combination of the common law, equity and statute – though, as I understand it, the Misrepresentation Act 1967 didn't alter the rules as to what constitutes an effective misrepresentation. Summarising the relevant pages in *Chitty on Contracts*, a material and actionable misrepresentation is an untrue statement of existing fact or law made by one party (or his agent for the purposes of passing on the representation, acting within the scope of his authority) to another party that induced that party to enter into a contract.

However, a mere statement of opinion, rather than fact or law, which proves to be unfounded, isn't a misrepresentation unless the opinion amounts to a statement of fact and it can be proved that the person who gave it did not hold it or could not reasonably have held it. It also needs to be shown that the other party understood and relied on the implied factual misrepresentation.

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 – nor was it untrue to tell prospective members that they would receive *some* money when the allocated property is sold.

After all, Mr A's share in the Allocated Property clearly constituted an investment as it offered him the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it.

But as the PR knows, while the term "investment" is not defined in the Timeshare Regulations, it was agreed by the parties in *Shawbrook & BPF v FOS* that, by reference to the decided authorities, "*an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit*" (see paragraph 56).

Yet, contrary to what the PR says, none of the contractual paperwork made any promises that a profit might be made. The PR argues that Mr A's Fractional Rights Certificate, for instance, made a clear and unambiguous "investment promise" because it indicated that, upon the sale of the Allocated Property, he would receive a fraction of the net sales proceeds. However, nowhere did the Certificate imply let alone say that that fraction would be worth more in real terms in the future than at the Time of Sale.

As I said in my provisional decision, the Supplier's training material left open the possibility that the sales representative may have positioned Fractional Club membership as an

investment. So, I accept that it's possible that Fractional Club membership was marketed and sold to Mr A as an investment orally.

Mr A says little about what was said, by whom and in what circumstances for the purposes of determining whether representations by the Supplier amounted to false statements of existing fact rather than expressions of honestly held opinions about the likely value of the Allocated Property in the future. And while the PR's own calculations might cast some doubt over the likelihood of the Allocated Property being sold at a profit given the initial and ongoing costs of it to Mr A, there isn't enough evidence to persuade me that the relevant sales representative(s) would have carried out that sort of calculation at the Time of Sale or would otherwise have had information that would indicate that they knew or ought reasonably to have known at the time that any such representations weren't true.

And while the PR might question the exact legal mechanism used to give prospective members an interest in allocated properties, that does not change the fact that the shares of members (such as Mr A) were clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort.

I'm not persuaded, therefore, by the allegations of fraudulent misrepresentation from the PR. And with that being the case, they aren't reasons to uphold this complaint and direct the Lender to compensate Mr A.

Sections 75 and 140A: the Supplier's misrepresentations in 2009 and 2010

I do not think that section 32 of the Limitation Act assists Mr A, because I do not agree that material facts were concealed from him. The facts which the PR says were deliberately concealed were all matters connected with the Fractional Club and how it worked – but only the timeshare which was purchased in 2013 was a fractional timeshare. The matters relied on by the PR are not relevant to the products which were sold in 2009 and 2010. So I remain of the view that Mr A's section 75 claims about those timeshares were time-barred, and that the Lender was entitled to reject them.

However, misrepresentation can result in a credit relationship being unfair, and so it is open to me to consider those allegations under section 140A instead. There has been no challenge to my finding that Credit Agreement 1 is not within my jurisdiction, but I can consider whether Mr A's second credit relationship with the Lender was unfair. Section 56 of the CCA makes the Lender liable for what the Supplier did or said at the 2010 Time of Sale.

However, the only alleged misrepresentation which is relevant to the 2010 timeshare is that the Supplier's resorts were exclusive to members, when they were not. I've seen no evidence which supports that the Supplier told prospective customers that their resorts were exclusive (as opposed to exclusive benefits being made available to members).

All of the other alleged misrepresentations appear to be specific to the fractional timeshare (see pages 2 and 3 of the Letter of Complaint), so they are not relevant here.

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

I've already explained why, in light of the PR's latest allegations of fraudulent misrepresentation, I'm not persuaded that the timeshares were actionably misrepresented by the Supplier at the Times of Sale. And it is for those reasons that I don't think the credit relationships between Mr A and the Lender were rendered unfair to him on the basis that the timeshares had been misrepresented.

However, there are, of course, other reasons why the PR argues that the credit relationships in question were unfair. But having reconsidered the entirety of those relationships along with everything that has now been said and/or provided by both sides, I still don't think the credit relationships between Mr A and the Lender were likely to have been rendered unfair to him for the purposes of section 140A. When coming to that conclusion, I have looked again at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;
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;
4. The inherent probabilities of the sale given its circumstances; and, when relevant
5. Any existing unfairness from a related credit agreement.

I have also reconsidered any commercial (including commission) arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements.

The PR continues to argue that:

1. The Lender's decision to lend to Mr A was, in essence, irresponsible;
2. Mr A was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale; and
3. The terms about the maintenance charges were unfair.

However, as neither the PR nor Mr A have submitted any new evidence to further the arguments above, it is for the same reasons I gave in my provisional decision that I don't think any of them render his credit relationship with the Lender unfair to him for the purposes of section 140A.

I also do not accept the PR's argument that the Lender should only lend to consumers who already have enough savings to repay the loan out of their savings. That is clearly wrong, for two reasons. Firstly, because guidelines about responsible lending say that borrowing should be sustainable from income, without the need to resort to savings to make repayments. And secondly, because there would be no need to borrow money to buy a product if the consumers already had the money they needed to buy it (nor would it make financial sense for them to take an interest-bearing loan in those circumstances).

But I'll turn now to what continues to be the main reason for the PR's assertion that the credit relationship arising under Credit Agreement 5 (which financed a purchase of fractional points) was unfair.

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

As I said in my provisional decision, there is competing evidence in this complaint as to whether the Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations. I acknowledged that it was possible that Fractional Club membership was marketed and sold to Mr A as an investment in breach of regulation 14(3) – a view I still hold.

But I also thought and still think that it isn't necessary to make a formal finding on that

particular issue for the purposes of my determination on this complaint, because a breach of regulation 14(3) by the Supplier is not itself determinative of the outcome in this complaint unless the impact of such a breach suggested otherwise.

The PR disagrees with that and cites the judgment of Mrs Justice Collins Rice in *Shawbrook & BPF v FOS* in support – saying that she found that the selling of a timeshare as an investment (i.e. in a breach of regulation 14(3) of the Timeshare Regulations) was, itself, sufficient to create an unfair credit relationship.

However, on my reading of *Shawbrook & BPF v FOS*, Mrs Justice Collins Rice didn't find that a breach of regulation 14(3) of the Timeshare Regulations was *"causative of the legal relations entered into".* She recognised that such a breach was *"conduct that knocks away the central consumer protection safeguard"*, but she went on to say that it was the ombudsmen behind the two reviewed decisions who found that such a breach was, given the facts and circumstances of the relevant complaints, causative of the consumers in question purchasing their timeshares and taking out loans to do so.

What's more, the Supreme Court's judgment in *Plevin* makes it clear that regulatory breaches do not automatically create unfairness for the purposes of section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. So I can't just say that there must have been a breach of regulation 14(3) just because the product is an investment.

I am also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in *Carney v NM Rothschild & Sons Ltd* [2018] EWHC 958 ('*Carney*') and *Kerrigan v Elevate Credit International Ltd* [2020] EWHC 2169 (Comm) ('*Kerrigan*') (respectively) on causation.

In *Carney*, HHJ Waksman QC said the following in paragraph 51:

"In cases of wrong advice and misrepresentation, it would be odd if any relief could be considered if they did not have at least some material impact on the debtor when deciding whether or not to enter the agreement … in a case like the one before me, if in fact the debtors would have entered into the agreement in any event, this must surely count against a finding of unfair relationship under s140A."

And in *Kerrigan*, HHJ Worster said this in paragraphs 213 and 214:

"The terms of section 140A(1) CCA do not impose a requirement of "causation" in the sense that the debtor must show that a breach caused a loss for an award of substantial damages to be made. The focus is on the unfairness of the relationship, and the court's approach to the granting of relief is informed by that, rather than by a demonstration that a particular act caused a particular loss. Section 140A(1) provides only that the court ***may*** *make an order* ***if*** *it determines that the relationship is unfair to the debtor. …*

There is a link between (i) the failings of the creditor which lead to the unfairness in the relationship, (ii) the unfairness itself, and (iii) the relief. It is not to be analysed in the sort of linear terms which arise when considering causation proper. The court is to have regard to all the relevant circumstances when determining whether the relationship is unfair, and the same sort of approach applies when considering what relief is required to remedy that unfairness."

So, it still seems to me that, if I am to conclude that a breach of regulation 14(3) led to a credit relationship between Mr A and the Lender that was unfair to him and warranted relief as a result, then whether the Supplier's breach of regulation 14(3) led him to enter into the Purchase Agreement and the Credit Agreement is still an important consideration.

Indeed, doing that accords with common sense, for if events would have unfolded in the same way whether or not such a pre-contractual breach had occurred, it would be difficult to attribute any particular importance to the breach when deciding whether an unfair debtor-creditor relationship ensued, or whether a remedy is appropriate.

If there had been a breach of regulation 14(3), would it have rendered the credit relationship between Mr A and the Lender unfair to him?

Having found that it was possible that the Supplier breached regulation 14(3) of the Timeshare Regulations at the 2013 Time of Sale, I have considered (as I did in my provisional decision) what impact that breach (if there was one) would have had on the fairness of the credit relationship between Mr A and the Lender under Credit Agreement 5 and the related Purchase Agreement.

And on my reading of the evidence before me, I'm still not persuaded that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr A decided to go ahead with their purchase, such that he would have made an entirely different purchasing decision had there not been a breach of regulation 14(3). That is for the essentially the same reasons as I gave in my provisional findings. Since then, the PR has provided a client questionnaire, dated August 2017, which supplements Mr and Mrs A's witness statement, but which does not change my overall impression of their evidence as a whole.

On balance, therefore, for the reasons I've set out above, I don't think the credit relationship between Mr A and the Lender was unfair to him even if the Supplier had breached regulation 14(3).

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

As I've already said, I set out my thoughts in relation to the implications of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench* for this complaint in my addendum provisional decision. I remain satisfied that the Lender has provided me with sufficient information to reach a conclusion about its commercial (including commission) arrangements with the Supplier. I've seen nothing in this case that leads me to think that the information in question is inaccurate. And while I recognise that the PR might disagree with the thoughts I shared in my addendum provisional decision, it hasn't offered any evidence and/or arguments that lead me to think that (1) the factors referenced by the Supreme Court have a bearing on the outcome of this complaint given its circumstances or (2) there are any other reasons why the commercial (including commission) arrangements between the Supplier and the Lender rendered the credit relationship between the latter and Mr A under the Credit Agreement and related Purchase Agreement unfair for the purposes of section 140A.

In response to my provisional decision, the PR also argues that the Supplier breached regulation 12 of the Timeshare Regulations (which is concerned with the provision of key information) because it failed to provide Mr A with information on the market value of the Allocated Property, title deeds and a proper legal description beyond a basic unit number.

However, regulation 12 does not say that the Supplier has to provide the title deeds. And it isn't clear what the PR means by "proper legal description" and it has provided no authority for the suggestion the Supplier had to provide Mr A with information on the title deeds of the Allocated Property. What's more, when it comes to the market value of the Allocated Property, I would draw the PR's attention to what Mrs Justice Collins Rice said in paragraphs 106 and 110 of her judgment in *Shawbrook & BPF v FOS* (my emphasis):

"Both ombudsmen rely on the reference in Sch.1 to 'exact nature and content of the rights' as being the basis for perceiving a legal obligation to provide 'value' information. But first, having regard to the high level of specificity in the Schedule, ***it is obvious that 'value' information is nowhere specified as such. And second, 'exact nature and content of the rights' is clearly intended, in context, to be a fair and objective identification and description of those rights. 'Value' information may possibly be context for, or commentary on, those rights, but the 'exact nature and content of rights' is something different from information which may (or may not) be relevant to how much they might be worth, now or in the future.***"*

"I do not, and do not need to, go so far as to infer from the Regulations a legal prohibition on the provision of valuation information. ***My conclusion is that there is no legal obligation, derivable from Reg.12 of the Timeshare Regulations, to provide it*** *… It remains my view that the principal legal consumer-protection control over buying and selling fractional ownership timeshares is the Reg.14(3) prohibition. That provision alone makes it hard enough to market a timeshare product containing a bare interest in the proceeds of the deferred sale of real property lawfully, without inviting the fleshing out of the law as positively demanding investor-protection information obligations at the same time."*

In any event, 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, even if it could be said that the Supplier failed to give Mr A sufficient information, in good time, in order to satisfy the requirements of regulation 12 of the Timeshare Regulations for some of the reasons the PR gives – and I make no such finding – neither he 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 when I've already found that the prospect of a financial gain from the Allocated Property was not an important and motivating factor behind his purchase. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why that could be said to have rendered the credit relationship in question unfair to him.

The overall costs of the Fractional Club

The PR has calculated that the total amount spent (or to be spent) by Mr A under the Credit Agreement and the Purchase Agreement adds up to £61,818.08, plus another €28,689.05 in annual maintenance charges. This is said to be unfair because of (1) the alleged lack of proper affordability checks, and (2) the disparity between the value received and the financial burden imposed, leading to what it called a severe imbalance in the parties' rights and obligations.

I have already explained why I do not think there was a failure to carry out affordability checks. But to that I would add that the question of whether borrowers can afford a loan does not depend on the total financial liability incurred, considered as a lump sum, but rather on their ability to repay the loan in a sustainable manner. The loan payments for Credit Agreement 2 were £202:27 per month, which does not strike me as unaffordable for a homeowner with no mortgage and a monthly income of £1,200. And the loan payments under Credit Agreement 5 were cheaper, at £145:23 per month.

As for whether the fractional points were good value for money, I don't think I need to make a finding about that. The Credit Agreement made it clear how much interest Mr A would pay and how much he would have to repay in total, and he was told there would be annual maintenance fees. He wasn't hoodwinked into thinking he would only have to pay a total of

£9,675. It was his informed choice to purchase the fractional points, and he had 14 days (the cooling-off period) to reflect on his decision and to withdraw from his purchase and from his loan if they wished to change their minds. He decided that the points were worth buying, and if he has since changed his mind about that, that does not mean that his relationship with the Lender was unfair all along.

Conclusion

Having adopted my provisional findings, and reconsidered the facts and circumstances of this complaint, I still don't think the Lender acted unfairly or unreasonably when it dealt with Mr A's section 75 claims. I'm still not persuaded that the Lender was party to a credit relationship with Mr A that was 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 for me to direct the Lender to compensate Mr A.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 8 May 2026.

Richard Wood
Ombudsman