

## **The complaint**

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

## **What happened**

Mrs J and a Mr E (now deceased) purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 8 November 2017 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,040 fractional points at a cost of £13,430 (the 'Purchase Agreement').

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

Mrs J and Mr E paid for their Fractional Club membership by paying a £7,000 deposit (paid for by Mrs J) and by taking finance of £6,430 from the Lender in Mrs J's sole name (the 'Credit Agreement').

In 2018 it appears that Mrs J may have appointed (and paid) a professional representative (a 'PR') to make a claim under Section 75 of the CCA and/or a complaint against the Supplier and/or Lender on her behalf in respect of her Fractional Club membership purchase, but I can't see that such a claim or complaint was ever made by a PR on Mrs J's behalf.

In, or around, June 2021 Mrs J wrote to the Lender herself (the 'Letter of Complaint') to complain that the Fractional Club membership and loan had been mis-sold to her.

The Lender didn't deal with Mrs J's concerns so she referred the complaint to the Financial Ombudsman Service.

Mrs J's complaint was assessed by an Investigator who, having considered the information on file, rejected it on its merits.

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

Having considered everything, I came to the same conclusion as our Investigator and thought Mrs J's complaint shouldn't be upheld. I issued a provisional decision, setting out my thoughts and invited both parties to respond with anything further they wished me to consider before I issued a final decision. The provisional decision included the following:

## **The legal and regulatory context**

*In considering what is fair and reasonable in all the circumstances of the complaint, I'm 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.*

*I will refer to and set out several regulatory requirements, legal concepts and guidance in this decision, but I'm satisfied that of particular relevance to this complaint is:*

- *The CCA (including Section 75 and Sections 140A-140C).*
- *The law on misrepresentation.*
- *The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').*
- *The Consumer Rights Act 2015 ('CRA')*
- *The Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations').*
- *Case law on Section 140A of the CCA – including, in particular:*
  - *The Supreme Court's judgment in Plevin v Paragon Personal Finance Ltd [2014] UKSC 61 ('Plevin') (which remains the leading case in this area).*
  - *Scotland v British Credit Trust [2014] EWCA Civ 790 ('Scotland and Reast')*
  - *Patel v Patel [2009] EWHC 3264 (QB) ('Patel').*
  - *The Supreme Court's judgment in Smith v Royal Bank of Scotland Plc [2023] UKSC 34 ('Smith').*
  - *Carney v NM Rothschild & Sons Ltd [2018] EWHC 958 ('Carney').*
  - *Kerrigan v Elevate Credit International Ltd [2020] EWHC 2169 (Comm) ('Kerrigan').*
  - *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').*

## **Good industry practice – the RDO Code**

*The Timeshare Regulations provided a regulatory framework. But as the parties to this complaint already know, I'm also required to take into account, when appropriate, what I consider to have been good industry practice at the relevant time – which, in this complaint, includes the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code').*

## **What I've provisionally 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.*

*Having considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint, I don't currently think this complaint should be upheld.*

*But before I explain why, I want to make it clear that my role as an Ombudsman isn't to address every single point that has been made to date. Instead, it's to decide what is fair and reasonable in the circumstances of this complaint. So, if I haven't commented on, or referred to, something that either party has said, that doesn't mean I haven't considered it.*

*What is more, I've made my decision on the balance of probabilities – which means I've based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.*

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

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*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.*

*In short, a claim against the Lender under Section 75 essentially mirrors the claim Mrs J could make against 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 in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mrs J at the Time of Sale, the Lender is also liable.*

*Mrs J says her Fractional Club membership was misrepresented to her.*

*A misrepresentation is a statement of fact made by one party to a contract to the other that isn't true. Now while I recognise that Mrs J's concerns about the way in which her Fractional Club membership was sold, she hasn't elaborated on this very broad and general statement. This leads me to conclude that there were no false statements of existing fact made to Mrs J by the Supplier at the Time of Sale. And with that being the case I don't think the Lender is liable to pay her any compensation for any alleged misrepresentation of the Supplier.*

### ***Section 75 of the CCA: the Supplier's breach of contract***

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*I've already summarised how Section 75 of the CCA works and why it gives Mrs J a right of recourse against the Lender. So, it isn't necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.*

*Mrs J says that the Supplier and/or one or more other companies related, or linked, to it have "ceased trading" or are "now bankrupt". Now this might constitute a breach of the Purchase Agreement. However, Mrs J hasn't said, suggested or provided evidence to demonstrate that she is no longer:*

- 1. a member of the Fractional Club;*
- 2. able to use her Fractional Club membership to holiday in the same way she could initially; and*
- 3. entitled to a share in the net sales proceeds of the Allocated Property when her Fractional Club membership ends.*

Overall, therefore, from the evidence I've seen to date, I don't think the Lender is liable to pay Mrs J any compensation for any alleged breach of contract by the Supplier.

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

I've already explained why I'm not persuaded that the contract entered into by Mrs J was misrepresented (or breached) by the Supplier in a way that makes for a successful claim under Section 75 of the CCA and outcome in this complaint.

But Mrs J has also submitted arguments to our service, if not the Lender, that either say or infer that the credit relationship between her and the Lender was unfair under section 140A of the CCA, when looking at all the circumstances of the case, including representations and parts of its sales process at the Time of Sale she has mentioned.

As Section 140A of the CCA is relevant law, I do have to consider it. So, in determining what is fair and reasonable in all the circumstances of the case, I will consider whether the credit relationship between Mrs J and the Lender was unfair.

I've considered the entirety of the credit relationship between Mrs J and the Lender along with all of the circumstances of the complaint and I don't think the credit relationship between her 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've looked at:

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

I've then considered the impact of these on the fairness of the credit relationship between Mrs J and the Lender.

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

The first thing for me to say is that given the limited evidence in this complaint, I'm not persuaded that anything done or not done by the Supplier was prohibited under the CPUT Regulations.

Mrs J says that the lending was irresponsible given her personal and financial circumstances at the Time of Sale. I haven't seen anything to persuade me that the right checks weren't carried out before the Lender lent to Mrs J. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mrs J was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship with the Lender was unfair to her for this reason. Again, from the information provided, I'm not satisfied that the lending was unaffordable for Mrs J. If there is any further information on this (or any other points raised in this provisional decision) that Mrs J wishes to provide, I would invite her to do so in response to this provisional decision.

*Mrs J says that she was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale. I acknowledge that she may have felt weary after a sales process that went on for a long time. But she says little about what was said and/or done by the Supplier during her sales presentation that made her feel as if she had no choice but to purchase Fractional Club membership when she simply didn't want to.*

*So there is insufficient evidence to demonstrate that Mrs J made the decision to purchase Fractional Club membership because her ability to exercise that choice was significantly impaired by pressure from the Supplier.*

*Mrs J initially said that the day after her purchase she tried to cancel it but decided not to do so because the Supplier advised her that she would "lose" her £7,000 deposit. But this submission isn't supported by the documentation she was provided with and signed.*

*For example I can see that the Information Statement Mrs J was provided with and signed states, immediately above her signature, the following:*

*"General Information*

*The Consumer has the right to withdraw from this contract without giving any reason within 14 calendar days from the conclusion of the contract or any binding preliminary contract or receipt of those contracts if that takes place later.*

*During this withdrawal period, any advance payment by the consumer is prohibited. The prohibition concerns any consideration, including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt etc. It includes not only payment to the trader, but also to third parties."*

*So although I accept I can't say for certain that Mrs J wasn't advised the following day that cancelling her purchase would result in her losing her £7,000 deposit, in light of the above (and in light of other documentation I've seen) I'm simply not persuaded, on the balance of probabilities, this is what happened.*

*Furthermore, in a recent submission to our service Mrs J suggested that she might not have sought cancellation of her purchase until after 14 days had passed. And if this is what happened I can't say that being advised (everything else being equal) that she would lose her £7,000 deposit (if indeed that is what she was advised) was incorrect.*

*I'm not persuaded, therefore, that Mrs J's credit relationship with the Lender was rendered unfair to her under Section 140A for any of the reasons above. But there is another reason why Mrs J's credit relationship with the Lender might have been unfair to her. And that's if Fractional Club membership was marketed and sold to her as an investment in breach of prohibition against selling timeshares in that way. And this is something that a PR has suggested happened in response to the investigator's view.*

*Was Fractional Club membership marketed and sold at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations?*

*The Lender doesn't dispute, and I'm satisfied, that Mrs J's Fractional Club membership 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 membership of the Fractional Club 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.”*

*The term “investment” isn’t defined in the Timeshare Regulations. In Shawbrook & BPF v FOS, the parties agreed 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” at [56]. I will use the same definition.*

*Mrs J’s share in the Allocated Property clearly, in my view, constituted an investment as it offered her the prospect of a financial return – whether or not, like all investments, that was more than what she first put into it. But the fact that Fractional Club membership included an investment element didn’t, 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 didn’t 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 Mrs J as an investment in breach of Regulation 14(3), I’ve to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.*

*There is evidence in this complaint that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an ‘investment’ or quantifying to prospective purchasers, such as Mrs J, the financial value of her share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership wasn’t sold to Mrs J as an investment.*

*With that said, I acknowledge that the Supplier’s training material left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. And while that wasn’t alleged by Mrs J when she complained, I accept that it’s possible that Fractional Club membership was marketed and sold to her as an investment in breach of Regulation 14(3) given the difficulty the Supplier was likely to have had in presenting a share in the net sales proceeds of the Allocated Property as an important feature of Fractional Club membership without breaching the relevant prohibition.*

*However, I don’t think it’s necessary to make a finding on this point because, as I’ll go on to explain, I’m not currently persuaded that would make a difference to the outcome in this complaint anyway.*

*Was the credit relationship between the Lender and Mrs J rendered unfair?*

*As the Supreme Court’s judgment in Plevin makes clear, it doesn’t automatically follow that regulatory breaches 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.*

*I'm also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in Carney and 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 seems to me that, if I'm to conclude that a breach of Regulation 14(3) led to a credit relationship between Mrs J and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) which, having taken place during its antecedent negotiations with Mrs J, is covered by Section 56 of the CCA, falls within the notion of "any other thing done (or not done) by, or on behalf of, the creditor" for the purposes of 140(1)(c) of the CCA and deemed to be something done by the Lender) lead her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.*

*But I'm not currently persuaded that it did. I'll explain.*

*There was no suggestion in Mrs J's initial complaint to the Lender in 2018 that the Supplier had sold or marketed Fractional Club membership as an investment to her at the Time of Sale.*

*The first suggestion that the Supplier might have said something about Fractional Club membership being an investment is in a questionnaire completed in 2021, by what appears to have been a PR, which states that Mrs J was advised she "could sell Fractions to developer at a profit as advised this was bricks and mortar".*

*The second suggestion that the Supplier might have said something about Fractional Club membership being an investment is in a response to the Investigator's view that this compliant shouldn't be upheld, a response from another PR dated 2024.*

*Notwithstanding that Mrs J can't recall ever completing a questionnaire with a PR in 2021, or appointing the PR who responded to the Investigator's view in 2024, I'm not persuaded that either of these submissions can be given much weight.*

*I'm conscious that the PR's response dated 2024 was sent after the judgement in Shawbrook & BPF v FOS meaning there is a real risk that this response has been influenced by that judgement and knowledge of the Financial Ombudsman Service upholding other timeshare complaints due to timeshare providers breaching Regulation 14(3).*

*Furthermore it seems to me, that had it been important to Mrs J that Fractional Club had been positioned as an investment at the Time of Sale by the Supplier, this would have been included when she set out her concerns to the Lender, and then our Service. But this wasn't mentioned in either submission as something that was of concern to her. It was only brought up by a PR after the judgement in Shawbrook & BPF v FOS.*

*I find it hard to understand that if the investment element of Fractional Club was important to Mrs J, and this was material to her purchasing decision, why this wasn't set out as a concern in her Letter of Complaint or in her various communications with our Service in 2025, after we made direct contact with her to understand her motivation for purchasing Fractional Club membership.*

*So with all the above in mind on balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I'm not persuaded that Mrs J'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 she would have pressed ahead with her purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I don't think the credit relationship between Mrs J and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).*

#### **Section 140A: Conclusion**

*In conclusion, therefore, given all of the facts and circumstances of this complaint (including no suggestion from Mrs J she wasn't provided with all the information she needed to make an informed choice), I don't think the credit relationship between the Lender and Mrs J was unfair to her for the purposes of Section 140A. And taking everything into account, I think it's fair and reasonable to reject any complaint made in this respect.*

#### **Conclusion**

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*In conclusion, given the facts and circumstances of this complaint, I don't think that the Lender acted unfairly or unreasonably in not paying possible Section 75 claims, and I'm not persuaded that the Lender was party to a credit relationship with Mrs J under the Credit Agreement that was unfair to her for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate her.*

The Lender responded to my provisional findings to say that it accepted them.

Mrs J responded to my provisional findings to say she didn't accept them and that:

- As she had been the one that paid the £7,000 deposit for Fractional Club membership Mr E should have been the one to take out finance for the purchase price balance of £6,430.
- Finance of £6,430 was, more likely than not, unaffordable for Mr E and that was why she was the one that ended up taking it out.
- She was pressured into taking out the finance.



- She was advised that she *“could sell back to the builders at any time, and at a profit”* but she has been unable to find out how to do so.
- The Supplier has ceased trading and she is unable to use her membership.
- She was advised to take finance in her name and to seek repayment of that sum from Mr E after the sale by him of a holiday home he owned.
- She was able to pay for the purchase entirely in cash but was advised by the Supplier that this wasn’t possible and at least part of the purchase price needed to be financed.
- She was advised that her purchase constituted an investment.

### **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.

I would like to thank Mrs J for taking the time to respond to my provisional findings. But I’m not persuaded that she has added anything new for my consideration. However I would – for the sake of completeness – comment on her further submissions as follows.

This was a joint purchase meaning Mrs J and Mr E were jointly and severally liable for the cost of it. So there was no requirement on the Supplier to arrange the finance subject to this complaint in Mr E’s name rather than Mrs J’s.

I accept that the finance might have been unaffordable for Mr E and that’s why it was arranged in Mrs J’s name. But due to Mrs J being jointly and severally liable for the purchase cost, as pointed out above, I see nothing wrong or suspicious in such an arrangement.

Mrs J says she was pressured into taking out the finance. But as I said in my provisional findings even if she felt pressured she had 14 days to cancel the Purchase Agreement (and the finance) with nothing to pay but didn’t do so. So I’m simply not persuaded by this submission.

I accept that some discussion around Mr E selling a holiday home he owned might have taken place. But I don’t find this unusual or suspicious in the circumstances of this case especially given that Mrs J confirmed to our service recently this was something that Mr E was contemplating doing in any event.

Mrs J says she was able to pay for the purchase entirely in cash but was told by the Supplier that wasn’t possible. Now notwithstanding this submission somewhat weakens Mrs J’s submission that she should never have been granted finance by the Lender on the grounds of affordability, she has provided nothing in support of this submission. Furthermore I find it difficult to accept that the Supplier would have risked losing a sale by insisting a ‘cash buyer’ had to finance at least a part of the purchase price when they didn’t want to.

As I said in my provisional findings I accept that the sales representative may have positioned Fractional Club membership as an investment. But I remain of the view that this wasn’t a motivating factor in Mrs J’s purchasing decision for the reasons given in my provisional findings.

Mrs J says that she was advised that she *“could sell back to the builders at any time, and at a profit”*. But it’s my understanding this submission isn’t something that is supported by the various paperwork she accepts she signed. So on balance I’m simply not persuaded, on the balance of probabilities, this was something Mrs J was advised of by the Supplier. And as a result of my view in this respect there is nothing I can share with Mrs J as to how she can go about doing so.

Unfortunatley for Mrs J it's for her to provide more than just a statment to the effect that as a result of the Supplier and/or one or more other companies related, or linked, to it have "*ceased trading*" or are "*now bankrupt*" she hasn't been able to use her Fractional Club membership and/or that she isn't entitled to a share in the net sales proceeds of the Allocated Property when her Fractional Club membership ends and that the Supplier "*has failed to provide the services [she] believed [she and Mr E] had purchased*". And for the sake of complteness I would add that if Mrs J would like to understand the current status of her membership she (or a trusted advocate – such as a family member or friend) should contact the Supplier or its agents.

I appreciate Mrs J will be disspaoointed but having considered everytynig that has been said and submitted I see no good reason to deviate from my provisional findings and I now confrim those findings as final.

### **My final decision**

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 18 August 2025.

Peter Cook  
**Ombudsman**