DRN-5760099

The complaint

Mr N's complaint is, in essence, that Clydesdale Financial Services 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'), (2) lent money to him irresponsibly as it failed to carry out any checks to make sure the lending was affordable, and (3) deciding against paying claims under Section 75 of the CCA.

What happened

On 14 May 2011 (the 'Time of Sale 1'), Mr N purchased a trial timeshare membership (the 'Trial Membership') from a timeshare provider (the 'Supplier'), which was funded by finance from the Lender (the 'Credit Agreement 1').

On 18 July 2011 (the 'Time of Sale 2'), Mr N bought a points-based membership (the 'Timeshare') from the Supplier. The Timeshare had a purchase price of £26,845, of which £13,850 was funded by a second loan agreement with the Lender (the 'Credit Agreement 2'). The balance was funded by the trade-in of the Trial Membership and another timeshare Mr N held with a third party in the Dominican Republic. The Credit Agreement 2 included the consolidation of the remaining balance from the Credit Agreement 1.

Mr N settled Credit Agreement 2 on 17 October 2011, repaying the full balance to the Lender by cheque.

Where appropriate, I shall refer to these loans jointly as the 'Credit Agreements' and the events as the 'Times of Sale'.

Afterwards, on 21 December 2011, Mr N bought a fractional timeshare from the Supplier for £35,647, which he funded by other means.

Mr N – using a professional representative (the 'PR') – wrote to the Lender on 8 January 2019 (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 N's concerns as a complaint and issued its final response letter on 5 February 2019, rejecting it on every ground.

The Lender responded to the complaint, saying the claim under Section 75 was raised outside of the time limits set out in the Limitation Act 1980 ('LA'). The Lender says that the complaint about an unfair relationship under Section 140A of the CCA was raised too late as the Credit Agreements were paid off more than six years before the PR complained.

The Lender also explained that, although Mr N (and, separately, Mrs N) had applied for a loan to fund the purchase of the fractional timeshare, neither of these loans were taken up and therefore, the credit agreements didn't go ahead.[1]

On 13 March 2019, The PR wrote to our service to ask us to investigate matters.

One of our Investigators looked into things and explained that the Lender funded the Trial Membership and the Timeshare but concluded that the complaints about an unfair relationship and about the claims under Section 75 of the CCA were raised too late.

The PR disagreed, saying that Mr N was unaware he had cause to complain by August 2017 as he was yet to take advice from solicitors regarding compensation from the Lender.

Later, another Investigator looked into things again and concluded that the complaints that the Lender was party to an unfair debtor-creditor relationship, and the complaint that the Lender lent to Mr N irresponsibly, fell outside the jurisdiction of the Financial Ombudsman Service as they were raised too late. And he concluded that the complaint about the handling of the Section 75 claims was raised outside the time limits set out under the LA.

The PR rejected the investigator's view on 5 April 2024, saying that it needed to see evidence of when the Credit Agreements ended. It then 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 found that aspects (1) and (2) of Mr N's complaint fell outside the jurisdiction of the Financial Ombudsman Service, so I shared that conclusion in a separate decision with both parties.

Regarding aspect (3) of Mr N's complaint, I issued a provisional decision (the 'PD') on 18 July 2025 in which I found that this part of Mr N's complaint *does* fall under our jurisdiction, but that the Lender didn't act unfairly or unreasonably when it rejected Mr N's claims under Section 75 CCA.

I have copied an extract of the PD below:

"The complaint about the Lender's handling of Mr N's Section 75 claims

I will first explain why I think the complaint about the Lender's handling of Mr N's Section 75 claims falls under the jurisdiction of the Financial Ombudsman Service.

Section 75 CCA imposes a "like claim" on the Lender for any misrepresentations or breaches of contract by the Supplier. So, the debtor, here Mr N, is able to notify the Lender of his claim against it and, if the Lender fails or refuses to pay the claim, that may give rise to a complaint to the Financial Ombudsman Service.

So, the activity Mr N is complaining about here is the Lender's refusal to accept and pay his claims under Section 75 CCA. As a result, the time limit set out under the rules we must follow (these are set out in the FCA Handbook and are known as the 'DISP' Rules) doesn't usually begin until the respondent business answers the claim. In this case, the Lender rejected Mr N's Section 75 claims on 5 February 2019, so Mr N referred his complaint to the Financial Ombudsman Service within six years of this activity taking place, meaning that he raised it in time for the purposes of the time limits set out in DISP 2.8.2(2) R.

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[1] Neither Mr N nor the PR have disputed the Lender's position that it did not fund the fractional timeshare purchase. As there's no evidence that Mr N paid for the fractional timeshare using finance from the Lender, the issues Mr N raises about that purchase fall outside the scope of his complaint against the Lender.

However, I don't think it would be fair or reasonable to uphold his complaint about the Lender's handling of his claims. I'll explain why.

As I've explained, Mr N's claims under Section 75 CCA are "like" claims against the Lender which mirror the claims he could make against the Supplier. And so, it wouldn't be fair to expect the Lender to pay claims that arose after such a limitation defence would be available to the Supplier in court. As such, it's a relevant for me to consider whether Mr N's claims were time-barred under the LA before he first raised them to the Lender.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967, and the limitation period to make such a claim expires six years from the date on which the cause of action accrued.

Mr N's claim is subject to the limitation periods set out under Sections 2 and 9 of the LA, which are both six years from the date on which the cause of action accrued.

The dates on which the causes of action accrued were at the Times of Sale. I say this because Mr N entered into each purchase agreement at those times based on the alleged misrepresentations of the Supplier, which he says he relied upon when deciding whether or not to make the purchases. And the Credit Agreements were used to finance the purchases, so it was when Mr N entered into each agreement that he suffered a loss.

Mr N first notified the Lender of his claims against it on 8 January 2019, which was more than six years after both the Times of Sale. With that being the case, I don't think it was unfair or unreasonable of the Lender to decline to pay the claims Mr N made against it for the Supplier's alleged misrepresentations.

Mr N can also raise "like" claims against the Lender in the event that the Supplier breaches the contract. As Mr N says he was unable to book the holidays he was told he could book, I think he's saying the Supplier breached the contract with him and he thinks the Lender ought to pay his claims.

The limitation period for these claims is also six years, as set out in the LA, but the dates on which the causes of action accrued are not necessarily the same dates as for the claims about the alleged misrepresentation. Rather, the cause of action accrued when Mr N alleges the breaches of contract took place.

As Mr N's Trial Membership was traded in as part of the subsequent purchase of the Timeshare, which in turn was traded in towards the purchase of the fractional timeshare purchase, any alleged breaches of those contracts must have happened no later than the dates on which those trade ins took place, as the contracts ended on those dates. As such, the claims for any alleged breach of the contracts were also made too late as the Timeshare was traded in shortly after 21 December 2011, which is more than six years before Mr N first raised the claims with the Lender."

I also noted the following:

"The Court of Appeal's recent judgment in Johnson and Wrench -v- FirstRand Bank, and Hopcroft -v- Close Brothers *[2024] EWCA Civ 1282* ('Johnson, Wrench and Hopcroft') *sought to clarify the law on secret and partially disclosed commission – albeit in the context of car dealers acting as credit brokers. In my view, the Court of Appeal's judgment sets out principles which appear capable of applying to credit brokers other than car dealer–credit brokers. But as it was recently appealed to the Supreme Court, whose judgment is still*

pending, I don't intend on finalising my thoughts on this complaint until it is handed down and its implications on this complaint are considered, if there are any."

I've since written to the parties setting out my thoughts on why I wasn't persuaded to uphold this aspect of the complaint. I reiterated that the complaint the PR raised their concerns about the commission arrangements as part of the complaint about an unfair relationship under Section 140A of the CCA, which I concluded was raised too late and is outside our jurisdiction. I also set out that there might be some alternative grounds that could constitute separate and freestanding complaints to Mr N's allegation of an unfair credit relationship.

Applying the principles and factors set out in the Supreme Court judgment[2] handed down on 1 August 2025, I found nothing to suggest 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 N. Nor did I see anything that persuaded me that the commission arrangements between them gave the Supplier a choice over the interest rate which led Mr N into a credit agreement that cost disproportionately more than it otherwise could have.

Responses to my provisional findings

The Lender accepted my PD. The PR didn't accept the proposed outcome. It made further submissions in support of Mr N's position. Having received and reviewed these, I'm now proceeding with my final decision on the parts of his complaint that we have the jurisdiction to consider.

In doing so, I'm conscious that the PR has made a series of assertions surrounding the provision of information relating to commission arrangements. These include, among other things, expressing doubt that the Lender has provided key information, requesting that the information we have received be shared with it in full, and asking that we do not proceed with a decision before this is done and it has had an opportunity to make further submissions.

The PR's requests have been addressed by us under separate correspondence. For reasons I will explain in the course of this decision, I've concluded that it's appropriate for me to proceed with my determination.

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: 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.

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.

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[2] *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ("*Hopcraft, Johnson and Wrench"*)

[3] Financial Conduct Authority ("FCA") Handbook – DISP 3.6.4R ("R" denotes a rule).

After considering the case afresh and having regard for what's been said in response to my PD, and in my subsequent correspondence, I find it offers no persuasive reason to depart from the conclusions I've previously set out. I'll explain why.

The PR originally raised various points of complaint, such as those giving rise to Mr N's section 75 claim, which I addressed in my PD. In its response, it hasn't made any further comments in relation to most of its original points, nor has it said anything that leads me to think it disagrees with my provisional conclusions in relation to those points. For example, it has not provided me with any further comments about my finding that the claims were raised too late in line with the limits set out under the LA. So I'll focus here on the points the PR *has* made in response.

The PR's response to my PD relates mainly to the issue of whether the credit relationship between Mr N and the Lender was unfair *per* section 140A of the CCA. In particular, the PR has provided lengthy comments in relation to whether what it calls the *"fractional"* membership was sold to Mr N as an investment[4]. But I reiterate that the aspect of Mr N's complaint about an unfair relationship falls outside the jurisdiction of the Financial Ombudsman Service.

In my previous correspondence I mentioned that some of the grounds for complaint about the fairness or otherwise of the credit relationship could also constitute separate and freestanding complaints. I'll reiterate my findings here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr N (that is, secretly). 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.

For the reasons I set out previously, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr N 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. For the reasons I have also previously set out, I think Mr N would still have taken out the loans to fund his trial membership and timeshare membership at the Times of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Conclusion

After careful reconsideration of the facts and circumstances of this complaint, I adopt my provisional conclusions as part of my final decision. For the reasons I've given above and in my earlier correspondence I've mentioned, I don't think the Lender acted unfairly or unreasonably when it dealt with Mr N's section 75 claims. 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 N.

My final decision

[4] The PR has made dozens of references to "fractional" and the "Fractional Club" in its response. As I said in the PD and above, this complaint is about the purchases of a trial membership and a further membership that does not involve any fractional element.

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 10 March 2026.

Andrew Anderson
Ombudsman