DRN-5861522

The complaint

Mr R's complaint is, in essence, that Clydesdale Financial Services Limited trading as Barclays Partner Finance ('BPF') 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 a claim under Section 75 of the CCA.

The timeshare in question was bought jointly by Mr and Mrs R, but as the loan used to make the purchase was in Mr R's sole name, he is the only eligible complainant here. I will, however, refer to both Mr and Mrs R where it is appropriate to do so.

What happened

On 20 July 2010 (the 'Time of Sale') Mr and Mrs R bought a membership of a timeshare (the Vacation Club 'VC') from a timeshare provider (the 'Supplier'). They entered into an agreement with the Supplier to buy 1,100 VC points at a cost of £17,234 (the 'Purchase Agreement'), but after being given a trade in value for their existing trial membership and a further discount, Mr and Mrs R ended up paying £11,239 for their VC membership.

As VC members, every year they could use their points in exchange for holidays at the Supplier's holiday resorts. Different accommodation had different points values, depending on factors such as location, size, and time of year, and each was subject to availability. So, for example, a larger apartment in peak season would cost more to a member in their points than a smaller apartment outside of school holiday periods.

Mr R paid for their VC membership by taking finance of £11,239 from BPF (the 'Credit Agreement') in his sole name.

Mr R – using a professional representative (the 'PR') – wrote to BPF on 7 May 2024 (the 'Letter of Complaint') to raise a number of different concerns about their VC membership and the associated Credit Agreement. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

BPF dealt with Mr R's concerns as a complaint and issued its final response on 4 October 2024, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who ultimately, having considered the information on file, rejected the complaint on its merits.

The PR, on Mr R's behalf, disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii)

regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done so, I agree with the outcome reached by the Investigator, for broadly the same reasons. I do not think this complaint ought to be upheld.

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

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

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction.

However, as the Investigator set out, the Limitation Act 1980 (the 'LA') says Mr R had six years from the date on which the *'cause of action accrued'* to make his claim, after which BPF has a complete defence.

It is of course for a court to determine whether a respondent can rely on the LA to defend a claim, as BPF did when rejecting Mr R's claim under Section 75. But I wouldn't normally think it was unfair for a firm to rely on the LA to decline a claim that's been made outside the limitation period.

The date on which the cause of action accrued is, in this case, 20 July 2010 – the Time of Sale. It was then that Mr R entered into an agreement based, he alleges, on the Supplier's misrepresentation(s). As the loan from BPF was used to finance the purchase, it was also then that he says he suffered a loss. It follows that Mr R had six years from the Time of Sale to make a claim for misrepresentation. But he didn't make his claim until 7 May 2024, which is outside the time limits set by the LA.

The PR, in response to the Investigator's view, has referred to Section 32 of the LA, which postpones the limitation period in cases of fraud, concealment, or mistake. It's also referred to a county court judgment.

Essentially, it says Mr and Mrs R's purchase was 'ill-founded in law' and that Mr R couldn't have known their purchase was based on misrepresentations or that 'their arrangement was unlawful' until they took legal advice and the judgment was handed down in *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*'), which only happened on 5 May 2023. The PR says the issues concerning the legality of the timeshare arrangement with the Supplier were concealed from Mr and Mrs R at the Time of Sale. But the PR hasn't provided persuasive evidence of fraud, concealment or mistake, such that Section 32 of the LA would postpone the limitation period in this case. I'd like to reiterate that only a court can decide whether this claim was made out of time. My finding is simply that I don't think it would have been unfair for BPF to rely on the LA to decline the claim in this case.

So, as Mr R did not make his misrepresentation claim under Section 75 of the CCA to BPF within six years of the date the cause of action accrued, I do not think BPF needs to do anything further in regard to this claim.

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

I've already explained why I'm not persuaded that a claim under Section 75 of the CCA ought to succeed. But there are aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mr R and BPF along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of 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 have then considered the impact of these on the fairness of the credit relationship between Mr R and BPF.

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

Mr R's complaint about BPF being party to an unfair credit relationship was and is made for several reasons.

The PR says, for instance that:

1. The VC was misrepresented to Mr and Mrs R at the Time of Sale;
2. Mr and Mrs R were pressured by the Supplier into purchasing the VC membership at the Time of Sale; and
3. No credit or affordability checks were carried out before the lending was offered.

However, I am not persuaded that any of these are reasons why this complaint should succeed.

It has been said that the VC was sold to Mr and Mrs R by the Supplier as providing exclusive resorts and excellent quality and availability. But there has been no evidence submitted by Mr R as to what they were actually told by the Supplier here, so I cannot say whether it was likely to have been untrue. And there is no evidence that Mr and Mrs R have unsuccessfully tried to book accommodation and then complained to the Supplier about this – but I have seen that they have taken holidays using the membership. And as there is nothing else on file which makes me think the Supplier made misrepresentations at the Time of Sale, I am not persuaded that Mr R's credit relationship with BPF was rendered unfair in this regard.

The Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUTR') make clear that a commercial practice that significantly impaired a consumer's freedom of choice and caused them to buy something they otherwise wouldn't have done, could amount to an aggressive commercial practice. That is, in my view, something that could lead to an unfair debtor-creditor relationship. But as regards the allegation that Mr and Mrs R were put under undue pressure to make the purchase and enter the Credit Agreement, I acknowledge that they may have felt weary after a sales process that went on for a long time, but Mr R says nothing about what was said and/or done by the Supplier during the sales presentation that made them feel as if they had no choice but to purchase the VC membership when they simply did not want to. And I can see that they were given a 14-day cancellation period during which they could have cancelled the Purchase Agreement and Credit Agreement without penalty, and I have seen no reason why they did not do this if, as the PR attests, they only made the purchase due to the pressure they were put under by the Supplier.

And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs R made the decision to purchase the VC membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

As regards the allegation that no credit or affordability checks were completed, I haven't seen anything to persuade me that the right checks weren't carried out by BPF given this complaint's circumstances. But, even if I were to find that BPF 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 R was actually unaffordable, before also concluding that he lost out as a result, and then consider whether the credit relationship with BPF was unfair to him for this reason. But from the information provided, I agree with the Investigator here - I am not satisfied that the lending was unaffordable for Mr R.

Overall, therefore, I don't think that Mr R's credit relationship with BPF was rendered unfair to him under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR says the credit relationship with BPF was unfair to him. And that's the suggestion that the VC membership was marketed and sold to Mr and Mrs R as an investment in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').

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

In the Letter of Complaint, and in response to the Investigator's view, the PR has argued that the VC membership was sold and/or marketed to Mr and Mrs R as an investment that they could re-sell for a guaranteed profit.

BPF does not dispute, and I am satisfied that Mr and Mrs R's VC membership met the definition of a "timeshare contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling a timeshare membership (such as the VC) as an investment. This is what the provision said at the Time of Sale:

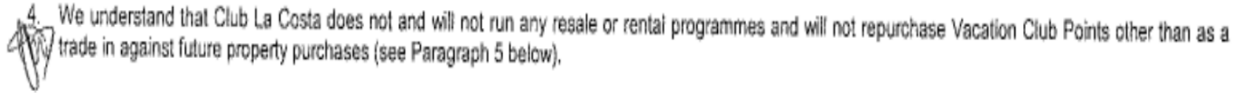
"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

Although the term "investment" is not 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.

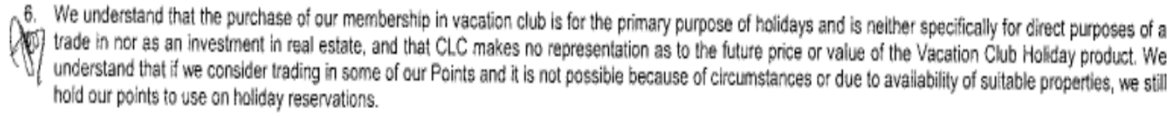
In its submissions to BPF and this Service, the PR hasn't provided a witness statement from Mr and/or Mrs R – or anything else that sets out in their own words what happened. I appreciate that the Letter of Complaint was probably prepared by the PR following a conversation or conversations with Mr and Mrs R, but a letter of complaint (or claim) is not evidence – especially when, as here, it contains bare allegations or a mere summary of the consumer's allegations.

As the Investigator said, direct testimony from the consumer, in full and in their own words, is so important in a case like this. It allows the decision-maker to assess credibility and consistency, to know precisely what was supposedly said, and to understand the context in which it was supposedly said. Here, that simply isn't possible. It's also important that the decision-maker can see that the Letter of Complaint genuinely reflects the consumer's testimony. Again, that simply isn't possible in this case. So, in the absence of direct testimony from Mr and/or Mrs R, I have to rely on the circumstances and inherent probabilities of the sale, and the paperwork that has been provided.

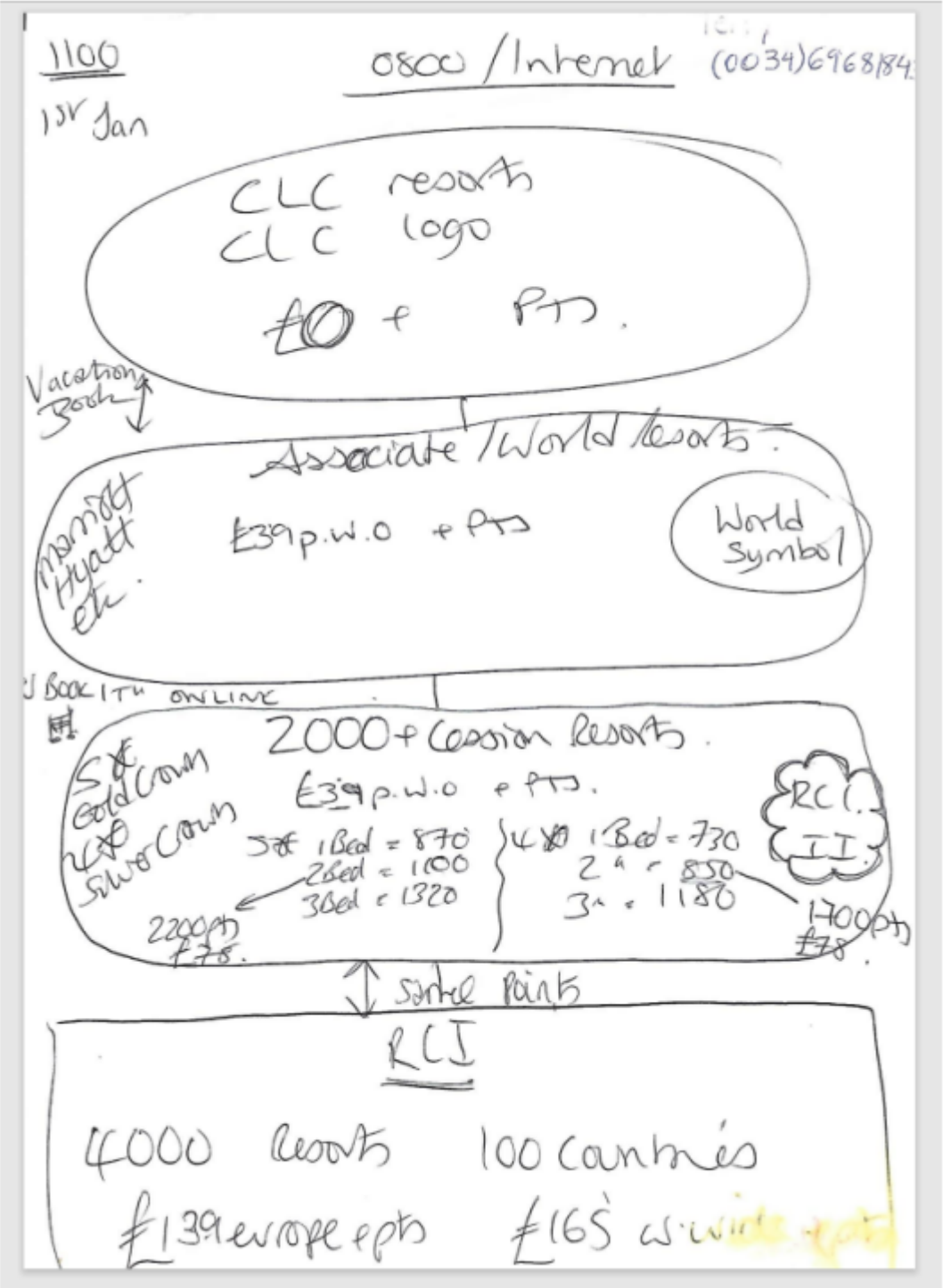
And I am not persuaded, from the evidence provided, that it is likely the Supplier would have told Mr and Mrs R that they were guaranteed (or even likely) to make a profit if they re-sold the membership at some point in the future. There is nothing in the contractual paperwork which refers to re-sale value, and indeed under point 4 of the Member's Declaration document, which has been initialled and signed by Mr and Mrs R as having been read and agreed it states:


4. We understand that Club La Costa does not and will not run any resale or rental programmes and will not repurchase Vacation Club Points other than as a trade in against future property purchases (see Paragraph 5 below).

So in the absence of any evidence to the contrary, I am not persuaded that the Supplier told or suggested to Mr and Mrs R that it would buy back the membership at a price higher than they paid. And at point 6 of the Member's Declaration it expressly says that it won't:


6. We understand that the purchase of our membership in vacation club is for the primary purpose of holidays and is neither specifically for direct purposes of a trade in nor as an investment in real estate, and that CLC makes no representation as to the future price or value of the Vacation Club Holiday product. We understand that if we consider trading in some of our Points and it is not possible because of circumstances or due to availability of suitable properties, we still hold our points to use on holiday reservations.

In its initial submission to BPF, the PR included a copy of a contemporaneous note made apparently at the Time of Sale. It says this note is quite clear in portraying the timeshare to be an investment:



But I am not persuaded by what the PR has said here. I cannot see how this note presents the VC membership as an investment. It appears only to refer to the use of the points either from its portfolio of resorts, or worldwide with its partner organisation.

So, the evidence does not persuade me, on balance, that the Supplier marketed or sold the VC membership to Mr and Mrs R as an investment in breach of Regulation 14(3) of the

Timeshare Regulations. So, I do not think the credit relationship between Mr R and BPF was rendered unfair for this reason.

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

The PR says that Mr and Mrs R were not told of the requirement to pay annual maintenance fees as part of the VC membership. But again, there is no evidence from Mr R about what was said, or not said in this regard. So I have considered the contractual documentation given to and signed by Mr and Mrs R at the Time of Sale.

And having done so, it seems likely to me that Mr and Mrs R were told by the Supplier at the Time of Sale that they would be required to pay an annual maintenance fee. I can see on the front page of the Purchase Agreement that it says:

(1) Purchase price:	GBP 17234.00
(2) Membership / Dues:	GBP INCL FIRST YEAR USE
(3) Trade In Value:	GBP 5995.00
(4) No Deposit Payable:	
BALANCE DUE BEFORE: 04/08/2010	**GBP 11239.00**

This makes me think it likely that there was some conversation around this payment. And under point 3 of the Member's Declaration, initialled and signed by Mr R:

3. We understand that currently the annual Membership Fee is EURO 252.11 for 2010. In addition the annual Individual Management Charge is EURO 0.8452 per Point purchased for 2010 and that an invoice will be sent for these within 3 months of full payment of the Agreement and thereafter by 1st January each year. The basis of these dues is set out in the Memorandum and Articles of Association together with the Scheme Rules and Regulations of the Company.

So, I think it likely that the Supplier told Mr and Mrs R that an annual maintenance fee would be required to be paid by them every year.

It follows that I am not persuaded that there was likely to have been an information failing in this regard.

Conclusion

In conclusion, for all of the reasons above, I do not think BPF acted unfairly or unreasonably when it did not accept the relevant Section 75 claim; I am not persuaded that BPF was party to a credit relationship with Mr R under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA; and I don't see any other reason why it would be fair or reasonable to direct BPF to compensate him.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 7 May 2026.

Chris Riggs
Ombudsman