

The complaint

Mr J'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') and (2) deciding against paying claims under Section 75 of the CCA.

What happened

Mr J was the member of a timeshare provider (the 'Supplier') – having purchased several products from it over time. But the product at the centre of this complaint is his membership of a timeshare that I'll call the 'Fractional Club' – which he bought on 15 October 2013 (the 'Time of Sale'). Mr J entered into an agreement with the Supplier to buy 11,000 fractional points at a cost of £8,480 (the 'Purchase Agreement').

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

Mr J paid for their Fractional Club membership by taking finance of £8,480 from the Lender (the 'Credit Agreement').

Mr J – using a professional representative (the 'PR') – wrote to the Lender on 31 August 2021 (the 'Letter of Complaint') to raise several concerns. Since then, the PR has raised some further matters it says are relevant to this outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender did not issue a final response in the time allowed, so Mr J referred his complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint that the Lender hadn't properly considered a claim made under Section 75 of the CCA. The Investigator felt that the complaint that there was an unfair credit relationship under Section 140A hadn't been made in time as per the rules that this service must follow and so it couldn't be considered.

Mr J disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. I issued a provisional decision in which I said:

1. Mr J's complaints about a credit relationship with the Lender that was unfair to him, and that the Lender lent to him irresponsibly are not within our jurisdiction because they weren't made within the time limits set out in DISP¹ 2.8.2 R (2).
2. Mr J made his complaint about the Lender's decision to reject his claims under Section 75 of the CCA in time under DISP 2.8.2 R (2). But I did not think that complaint should succeed.

¹ The Dispute Resolution Rules of the Financial Conduct Authority Handbook.

The Lender did not respond to my provisional decision.

The PR responded on behalf of Mr J. In summary, it said:

- In respect of the unfair relationship complaint, Mr J could not reasonably have known that the Supplier selling Fractional Club membership as an investment was a breach of the Timeshare Regulations until around 2019. And the complaint was made within three years of this, so we should consider its merits.
- It disagreed with my provisional decision on the merits of the complaint about the Lender's response to Mr J's Section 75 claim, and provided some further comments for me to consider, which I cover below.

I then issued a jurisdiction decision confirming that I could only consider the complaint about the Lender's response to Mr J's Section 75 claim. I followed this up with an email explaining my provisional findings on Mr J's concerns about the Lender paying commission to the Supplier, which was that this did not lead me to uphold the complaint. Both the Lender and the PR said they had nothing further to add in that regard.

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.

For the reasons given in my provisional findings, which are repeated below, I do not uphold this complaint.

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

As a general rule, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 (the 'LA') as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court. So, it is relevant to consider whether Mr J's Section 75 claim for misrepresentation was time-barred under the LA before he put it to the Lender.

As I mentioned above, a claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim Mr J could make against the Supplier.

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 (see Section 2 of the LA).

But a claim, like the one in question here, under Section 75 is also 'an action to recover any sum by virtue of any enactment' under Section 9 of the LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was the Time of Sale – being 15 October 2013. I say this because Mr J entered the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which he says were relied upon. And as the loan from the Lender was used to help finance the purchase, it was when he entered into the Credit Agreement that he suffered a loss.

Mr J first notified the Lender of his Section 75 claim on 31 August 2021. And as more than six years had passed between the Time of Sale and when that claim was first put to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mr J's concerns about the Supplier's alleged misrepresentations.

Section 75 of the CCA: the Supplier's Breach of Contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not 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.

Mr J says that he could not holiday where and when he wanted to. On my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, meaning it could be viewed as potentially breaching the Purchase Agreement. It is not clear precisely when this was alleged to have happened, but if it happened within six years of the time the complaint was first made, such a claim would not have been made too late under the LA.

Yet, 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 J states that the availability of holidays was/is subject to demand. It also looks like he made use of their fractional points to holiday. 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 Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr J 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.

The PR's response to my provisional decision about Section 75

In summary, the PR's further comments in response to the provisional decision which are relevant to the complaint about the Section 75 claims said that:

1. I had not properly applied the principles of the Limitation Act 1980, since Section 32(1)(b) provides more time to make the claim where the Supplier has concealed the misrepresentation.
2. Rule CONC 7.3.4R in the Financial Conduct Authority Handbook means that the Lender has a duty to treat customers fairly and consider evidence of fraud or misrepresentation – and this means the Lender should've investigated the claim rather than rejecting it.
3. I had failed to apply "*FOS technical guidance on linked lender liability, which requires that lender make reasonable enquiries rather than summarily dismissing such claims.*"

The PR's additional comments do not persuade me to depart from my provisional findings.

The PR says that the Supplier concealed that "*the timeshare's alleged "asset-backed" nature was false*". But, as mentioned above, Mr J's Fractional Club membership was asset-backed in that it was linked to the Allocated Property. That seems to have been made clear at the Time of Sale – both during the presentation Mr J is likely to have been given, and in the

documents provided to him at the time. So, I do not think this was “false”, as the PR alleges. And I can’t see that Section 32 of the Limitation Act provides more time for them to make the claim to the Lender.

As for the PR’s second point, CONC 7.3.4R says:

“A firm must treat customers in or approaching arrears or in default with forbearance and due consideration.”

I cannot see that this means what the PR says, nor that it is relevant to Mr J’s Section 75 claim. While there is a duty to treat customers fairly, I am not persuaded that the Lender unfairly rejected Mr J’s Section 75 claims.

Finally, the PR has not specified what technical guidance it is referring to. But I am satisfied I have followed our usual approach when deciding this complaint. As such, for the reasons given above, I do not uphold this complaint.

Commission complaint

As part of this complaint, Mr J’s professional representative (the ‘PR’) mentioned concerns about undisclosed commission. I am unable to consider this matter in terms of Mr J’s allegations of the Lender being party to an unfair relationship with him under Section 140A of the Consumer Credit Act – since that part of the complaint was made too late under the relevant rules.

However, it is possible that the PR’s complaint could be considered in a broader sense – the first relating to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the timeshare provider (the ‘Supplier’) because it took a payment of commission from the Lender without telling Mr J (i.e., secretly). And the second relating to the Lender’s compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier.

The legal and regulatory context

In relation to Mr J’s concerns about commission, I think the following regulatory rules/guidance are relevant:

The Office of Fair Trading’s Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the ‘OFT’) thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

The OFT’s Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

My findings on the commission complaint

I am not persuaded that the Supplier – when acting as credit broker – owed Mr J a fiduciary duty. In the Supreme Court judgment in the cases of *Johnson v FirstRand Bank Ltd*, *Wrench v FirstRand Bank Ltd* and *Hopcraft v Close Brothers Ltd* [2025] UKSC 33 it was 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.

So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to Mr J. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time 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.

The amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mr J entered wasn't high. At £216.24, it was only 2.5% of the amount borrowed and 3.6% as a proportion of the charge for credit. So, had Mr J 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 J wanted Fractional Club membership and had no obvious means of their 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 Mr J would still have taken out the loan to fund the purchase at the Time of Sale had the amount of commission been disclosed.

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 Agreement. And as it wasn't acting as an agent of Mr J but as the supplier of contractual rights that he obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreement and thus a fiduciary duty.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 9 February 2026.

Phillip Lai-Fang
Ombudsman