

## **The complaint**

Mr B'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.

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

## **What happened**

Mr and Mrs B were members of a timeshare provider (the 'Supplier') – having purchased a total of 6,000 points in the Supplier's European Collection ('EC') over time.

As EC 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. 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.

But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 7 October 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to convert their 6,000 EC points into 6,000 fractional points (they were given a conversion rate of £1/point) at a final cost of £7,500 (the 'Purchase Agreement').

Fractional points differed from their EC points. The two significant differences were that the fractional points membership had a shorter membership term (15 years compared to an end date of 2054 for the EC membership), and it was also asset backed – which meant the Fractional Club membership gave Mr and Mrs B more than just holiday rights. It also included a share in the net sale proceeds of a property named on their purchase agreement after their membership term ends.

Mr B paid for their Fractional Club membership by taking finance of £7,500 from the Lender (the 'Credit Agreement').

Mr B – using a professional representative (the 'PR') – wrote to the Lender on 10 August 2022 (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 acknowledged Mr B's concerns but did not send him a substantive response, so the PR referred Mr B's complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

### **The provisional decision**

Having considered everything that had been submitted, I agreed with the Investigator in that I didn't think Mr B's complaint ought to be upheld. But as I was expanding somewhat on what the Investigator had said, I set out my initial thoughts in a provisional decision (the 'PD') and invited both sides to submit any new evidence or arguments that they wished me to consider.

In the PD I said:

*"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.*

#### 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. 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.*

*It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs B were:*

- (1) Told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true.*
- (2) Told by the Supplier that Fractional Club membership was an "investment" when that was not true.*

*However, 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. After all, a share in an allocated property was, by its very nature, an investment. And while, as I understand it, the sale of the Allocated Property could be postponed in certain circumstances according to the Fractional Club Rules, Mr B says little to nothing to persuade me that they were given a guarantee by the Supplier that the Allocated Property 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's nothing else on file to support the PR's allegation, I'm not persuaded that there was a representation by the Supplier on the issue in question that constituted a false statement of fact.*

So, while I recognise that Mr B 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 did not accept this particular Section 75 claim.

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

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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 B says that they could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

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 and Mrs B states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday on a number of occasions. Whilst I accept that they may not have been able to take certain holidays, 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 B 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 an unfair credit relationship?

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I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other 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 B and the Lender 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 B and the Lender.

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

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

The PR says, for instance that:

1. The right checks weren't carried out before the Lender lent to Mr B; and
2. Mr and Mrs B were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.

However, as things currently stand, neither of these strike me as a reason why this complaint should succeed.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. 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 Mr B 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 the lending was unaffordable for Mr B.

And as regards the allegation of undue pressure, I acknowledge that Mr and Mrs B may have felt weary after a sales process that went on for a long time. But Mr B says little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. And Mr B has declined to purchase products from the Supplier in the past, so it is clear that he and Mrs B knew that they did not have to make a purchase. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs B made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr B's credit relationship with the Lender 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 now says the credit relationship with the Lender was unfair to him. And that's the suggestion that Fractional Club membership was marketed and sold to Mr and Mrs B as an investment in breach of prohibition against selling timeshares in that way.

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

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs B 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 B 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.*

*And 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 B, 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.*

*But 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 B 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.*

*Was the credit relationship between the Lender and the Consumer rendered unfair?*

*Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach (if there was one) had on the fairness of the credit relationship between Mr B and the Lender under the Credit Agreement and 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 B and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him and Mrs B to enter into the Purchase Agreement and Mr B into the Credit Agreement is an important consideration.*

*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 B decided to go ahead with their purchase. I think they would have gone ahead with the purchase for the shorter membership term it offered, whether or not the Supplier marketed the membership as an investment. I'll explain.*

As part of the PR's submissions, it sent in a statement from Mr B, which set out his and Mrs B's recollections of their entire relationship with the Supplier. This covered their purchases of EC points and then went on to talk about their purchase of the Fractional Club at the Time of Sale. He said:

*"At some point in 2014 we purchased Fractional Points with [the Supplier]. We were on holiday staying at the Kenmore Club in Perthshire. While we were there we attended a meeting with the sales team and there was a lot of pressure placed on us to push us to convert our points. As we were staying there, the pressure was spread over several days. We were told that the Fractional points would allow us to get a way out of the scheme, as we would be provided with part of the property value. I am an accountant and I am now embarrassed that I did not work out how much this would actually provide us with. I do not think that the property would have met the value that they promised. It was sold to us that it would be possible for the property to be sold and for us to access an investment for this, allowing us to stop paying fees to the timeshare. I am now concerned that the sale will not produce the value that we were promised. We had viewed this as a way of avoiding the timeshare being passed to future generations.*

*[...]*

*Therefore, we purchased Fractional Points with [the Supplier]. We cannot remember the cost of this however this was paid using a loan that was arranged by [the Supplier] and this was the only provider that we were offered at the time. I do not know if a credit check was carried out at time. This was paid off on 22nd July 2020."*

*On my reading of this, it does appear that the investment element of the membership was a consideration, and they were interested in the share in the Allocated Property, which is unsurprising given the nature of the product at the centre of this complaint. But, as Mr B says, he didn't consider the value of the property at either the Time of Sale, or what it could provide them when it was sold, which doesn't suggest its value was of particular interest to them. And I also find it hard to understand how he and Mrs B can't remember how much the membership cost if, as he is saying, it was bought as an investment – in my view the price of a product, if bought as an investment, is a particularly important detail when it comes to potential profit in the future from the sale of the Allocated Property.*

*But what does seem to me to be apparent, is that they saw the Fractional Club, with its defined and much shorter membership term, as a way to bring an end to their timeshare. Mr B, in his statement, when describing his earlier EC membership writes:*

*"After this purchase we did not have any particular problems prior to 2010 and we were able to access accommodation as and when/where we wanted it. However in around 2010 we wanted to travel to different places that [the Supplier] did not seem to have availability in. We did have family use the points for us frequently so it was not a total waste."*

*So, this seems to suggest that Mr and Mrs B were not entirely happy with their EC membership and the way it was working. So, when he goes on to say;*

*"We were told that the Fractional points would allow us to get a way out of the scheme, as we would be provided with part of the property value."*

*and;*

*"We had viewed this as a way of avoiding the timeshare being passed to future generations."*

these lead me to think that the shorter membership term was the reason they bought the Fractional Club membership.

So as Mr B himself doesn'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.

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 am not persuaded that Mr and Mrs B'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 B 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

The PR says that Mr and Mrs B were not given sufficient information at the Time of Sale by the Supplier in order to make an informed choice.

It isn't clear what information the PR thinks the Supplier failed to provide at the Time of Sale. But 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, while I acknowledge that it is possible that the Supplier did not give Mr and Mrs B sufficient information, in good time, in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'), even if that was the case, neither Mr B 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. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why they led to a financial loss for Mr B.

#### Mr B's Commission Complaint

I note that one of Mr B's other concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. The Supreme Court's recent judgment *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('Johnson, Wrench and Hopcraft') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer–credit brokers. So, once the implications of that judgment become clear, I will finalise my findings on this complaint.

#### Conclusion

In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and if I put the issue of commission to one side for the time being, I am not persuaded that the Lender was party to a credit relationship with Mr B under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate Mr B.

*But, as I've already said, once the implications of Johnson, Wrench and Hopcraft become clear, I will finalise my findings on this complaint."*

### **The responses to the provisional decision**

Both sides responded to the PD. The Lender provided information about how much commission it paid to the Supplier for broking the Credit Agreement, and the PR, on Mr B's behalf, said he had nothing further to add.

Following this, I wrote to both sides setting out how I was not persuaded that Mr B's credit relationship with the Lender was unfair to him for reasons relating to the commission arrangements between it and the Supplier.

The PR responded to say it had nothing further to add in relation to the commission arrangements either.

Having received the relevant responses from both sides, I am now finalising my decision.

### **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 published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance

Below are the most relevant provisions and/or guidance as they were at the relevant time:

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

### The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

### **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.

As neither side has provided any evidence or arguments following either my provisional decision or my thoughts on the commission arrangements in place here, and having reconsidered everything afresh, I see no reason why I should depart from my provisional findings as set out above.

I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with Mr B under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate Mr B.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 January 2026.

Chris Riggs  
**Ombudsman**