

The complaint

The estate of Mrs C'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 Mrs C 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.

For ease of reading I'll refer to the estate of Mrs C as Mrs C for the majority of this decision.

What happened

Mrs C was the member of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is her membership of a timeshare that I'll call the 'Signature Club' – which she bought on 5 March 2017 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 1,820 fractional points at a cost of £28,839 (the 'Purchase Agreement'). But after trading in part of an existing timeshare she paid £11,549.

Signature Club membership was asset backed – which meant it gave Mrs C 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 her membership term ended.

Mrs C paid for her Signature Club membership by taking finance of £11,549 from the Lender (the 'Credit Agreement').

Mrs C – using a professional representative (the 'PR') – wrote to the Lender on 13 February 2024 (the 'Letter of Complaint') to raise a number of different concerns. Since then the PR has raised some further matters it says are relevant to the 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 didn't issue a final response letter and the complaint was then referred to the Financial Ombudsman Service.

I issued a provisional decision in October 2025 setting out why I didn't plan to uphold the complaint. 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

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 Mrs C’s Section 75 claim for misrepresentation was time-barred under the LA before she 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 Mrs C 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. I say this because Mrs C entered into the purchase of her timeshare at that time based on the alleged misrepresentations of the Supplier – which she said were relied upon. And as the loan from the Lender was used to help finance the purchase, it was when she entered into the Credit Agreement that she suffered a loss.

Mrs C first notified the Lender of her Section 75 claim on 13 February 2024. 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 Mrs C’s concerns about the Supplier’s alleged misrepresentations.

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

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 Mrs C 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 along with any relevant training material;*
- 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;*
- 4. The inherent probabilities of the sale given its circumstances; and*

5. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationship between Mrs C and the Lender.

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

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

They include, allegations that:

- 1. the right checks weren't carried out before the Lender lent to Mrs C.*
- 2. the loan interest was excessive.*
- 3. The Credit Agreement was arranged by a broker acting outside of its authorisation.*

However, as things currently stand, none of these strike me as reasons 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 Mrs C 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. But from the information provided, I am not satisfied that the lending was unaffordable for Mrs C.

Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mrs C knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Signature Club membership. And as the lending doesn't look like it was unaffordable for her, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mrs C suffering a financial loss – such that I can say that the credit relationship in question was unfair on her as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate her, even if the loan wasn't arranged properly.

Further, I don't think the rate of interest was excessive, compared either to other rates available from other point-of-sale lenders or on the open market, so I can't say it would be fair or reasonable to tell the Lender to do anything because of this.

Overall, therefore, I don't think that Mrs C'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, perhaps the main reason, why the PR now says the credit relationship with the Lender was unfair to her. And that's the suggestion that Signature Club membership was marketed and sold to her 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

The Lender does not dispute, and I am satisfied, that Mrs C's Signature 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 Signature Club membership 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."

But the PR and Mrs C say that the Supplier did exactly that at the Time of Sale – saying, in summary, that they were told by the Supplier that Signature Club membership was the type of investment that would only increase in value.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and 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.

A share in the Allocated Property clearly constituted an investment as it offered Mrs C 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 Signature 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 Signature Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Signature Club membership was marketed or sold to Mrs C 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 her as an investment, i.e. told her or led her to believe that Signature Club membership offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

There is competing evidence in this complaint as to whether Signature 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 Signature Club as an 'investment' or quantifying to prospective purchasers, such as Mrs C, 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.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Signature Club membership as an investment. So, I accept that it's equally possible that Signature Club membership was marketed and sold to Mrs C 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 Mrs C 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 had on the fairness of the credit relationship between Mrs C 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 Mrs C and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

But on my reading of the evidence before me, the prospect of a financial gain from Signature Club membership was not an important and motivating factor when Mrs C decided to go ahead with her purchase.

Sadly, it is not possible to have testimony from Mrs C in this case and the complaint was brought after she passed away. So, I do not know what her specific recollections about the sale were or what her motivations for the purchase of Signature Collection membership may have been.

Testimony has been provided by the joint purchaser who was with Mrs C at the Time of Sale but it doesn't persuade me that the prospect of a financial gain from Signature Club membership was an important and motivating factor when Mrs C decided to go ahead with her purchase. The Joint purchaser has made an almost identical and very brief statement in relation to several sales across several years and the testimony is not specific to this particular sale and lacking in specific detail. They haven't said what the supplier said or did specifically at the Time of Sale that made them think they could expect a profit or financial gain or why this motivated them to go ahead with the purchase.

That doesn't mean Mrs C wasn't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as the estate of Mrs C doesn't persuade me that her purchase was motivated by her 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 she ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Signature Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mrs C's decision to purchase Signature Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). And for that reason, I do not think the credit relationship between Mrs C and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

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 claim and I am not persuaded that the Lender was party to a credit relationship with Mrs C under the Credit Agreement that was unfair to her 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 him.

The PR did not agree and provided further comments and evidence it wished for me to consider.

The Lender had nothing further to add.

The complaint has therefore been returned to me for a final 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 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. 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.

Following the responses from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the provisional decision in the main relate to the issue of whether the credit relationship between Mrs C and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mrs C as an investment at the Time of Sale and the pattern of sales before and after this.

As outlined in my provisional decision, the PR originally raised various other points of complaint, all of which I addressed at that time. But they didn't make any further comments in relation to those in their response to my provisional decision. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my provisional decision. So, I'll focus here on the PR's points raised in response.

The PR has provided further comments and evidence, (including comments on the Supplier's training material), which in my view relate to whether Signature Collection membership was marketed as an investment in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. However, as I explained in my provisional decision, while the Supplier's sales processes left open the possibility that the sales representative may have positioned Signature Collection membership as an investment, it isn't necessary to make a finding on this as it is not determinative of the outcome of the complaint. I explained that Regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

The PR's comments and evidence in this respect do not persuade me that I should uphold Mrs C's complaint because they do not make me think it's any more likely that the Supplier's breach of Regulation 14(3) led Mrs C to enter into the Purchase Agreement and the Credit Agreement. And that is a key consideration as to whether any potential breach of the Timeshare Regulations by the Supplier led to a credit relationship between Mrs C and the lender that was unfair on her.

The PR has provided its further thoughts as to Mrs C's likely motivations for purchasing Signature Collection membership. I recognise it has interpreted the testimony that came from Mrs C's partner differently to how I have and thinks it points to Mrs C having been motivated by the prospect of a financial gain from Signature Club membership.

In my provisional decision I explained the reasons why I didn't think Mrs C's purchase was motivated by the prospect of a financial gain or profit. And although I have carefully considered the PR's arguments in response to this, I'm not persuaded the conclusion I reached on this point was unfair or unreasonable.

The PR said Mrs C's partner's testimony shows Mrs C was led to believe she would recoup everything she and Mr C had paid to the Supplier in all their previous purchases as well as the capital and interest on the credit agreement and all of this amounted to a hope or expectation of a profit or financial gain. However, the total of those sums is a significant sum of money, likely over £100,000 once annual management fees are accounted for. Mrs C's

partner's testimony does not provide any detail as to how the Supplier explained that Mrs C's share in the sale proceeds from the Allocated Property could generate such a considerable return. And the available evidence does not persuade me this was something the Supplier was likely to have told Mrs C in this particular case.

From looking at Mrs C and her partner's purchase history I can see they traded in part of their significant holding of existing Fractional Club membership points each time they purchased additional Signature Collection memberships, including this one. And from looking at their reservation usage, they made regular use of holiday weeks, taking around 30 holidays. I think it's most likely that Mrs C, having been attracted to the features and benefits and benefits of Signature Collection membership, upgraded her Fractional Club membership for reasons other than the prospect of a profit or financial gain.

So, ultimately, for the above reasons, along with those I already explained in my provisional decision, I remain unpersuaded that any breach of Regulation 14(3) was material to Mrs C's purchasing decision. And for that reason, I do not think the credit relationship between Mrs C and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

S140A conclusion

Given all of the factors I've looked at in this part of my decision, including the relevant relationships, arrangements and payments between Mrs C, the Lender and the Supplier and having taken all of them into account, I'm not persuaded that the credit relationship between Mrs C and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

Other points

The PR said the pattern of selling from the Supplier, where a new product was purchased by Mrs C and/or her partner in consecutive years between 2014 and 2018, shows persistent pressure selling. I explained in my provisional decision that Mrs C's partner's testimony did not persuade me that she made her purchase because her ability to exercise that choice was significantly impaired by pressure from the Supplier. And nothing I've seen since my provisional decision makes me think I should depart from that finding. I don't think the consecutive nature of Mrs C and her partner's purchases by itself suggests they must have been pressured into making those purchases – even less so given how attracted I think they were to taking more holidays in signature collection accommodation and to upgrading their existing Fractional Club membership points.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably by not meeting Mrs C's Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with her 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.

My final decision

For the reasons I have explained above, I do not uphold the estate of Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs C to accept or reject my decision before 24 February 2026.

Michael Ball
Ombudsman