

The complaint

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 her 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 C, but as the loan used to make the purchase was in Mrs C's sole name, she is the only eligible complainant here. I will, however, refer to both Mr and Mrs C where it is appropriate to do so.

What happened

Mr and Mrs C purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 8 May 2017 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,360 fractional points for £21,445. But after trading in the trial membership that they had previously bought from the Supplier, they ended up paying £17,450 (the 'Purchase Agreement') for their Fractional Club membership.

Fractional Club membership was asset backed – which meant it gave Mr and 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 their membership term ends.

Mrs C paid for their Fractional Club membership by taking finance of £20,096 from the Lender (the 'Credit Agreement'). This amount also consolidated the outstanding balance of a previous loan (from a different lender) that she had taken out when she purchased their trial membership.

Mrs C – using a professional representative (the 'PR') – wrote to the Lender on 7 July 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 didn't send a substantive response to Mrs C's complaint within the eight weeks required by the regulator, so the PR referred her 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.

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

The provisional decision

I considered the matter and issued a provisional decision (the 'PD') setting out my initial thoughts on the merits of Mrs C's complaint.

In the PD I said:

“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 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 C 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, Mrs C 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 Mrs C 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 dealt with this particular Section 75 claim.

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.

Mrs C, in the Letter of Complaint, 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 C 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. I accept that they 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 Mrs C 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?

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 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; 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 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.

The PR says, for instance that:

- 1. The right checks weren't carried out before the Lender lent to Mrs C; and*
- 2. Mr and Mrs C 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 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.

And as regards the allegation that they were put under undue pressure, I acknowledge that Mr and Mrs C may have felt weary after a sales process that went on for a long time. And they have said the following when completing a questionnaire for the PR (which I will discuss in greater depth later in this decision) when asked to describe the way in which the Fractional Club was presented to them:

"Bulling [sic] you to be fair" and "we felt very intimidated by the hole [sic] thing. One person interviewing us whilst another watched from across the room, making hand gestures to each other."

But this 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. 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 if, as they now attest, 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 C 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 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 Mrs C. And that's the suggestion that Fractional Club membership was marketed and sold to her and Mr C 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 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 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 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 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 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.

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 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 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 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 and Mr C to enter into the Purchase Agreement and Mrs C into the Credit Agreement is an important consideration.

But on my reading of the evidence before me, I'm unable to conclude that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when they decided to go ahead with their purchase. I say this after careful consideration of the evidence provided in this case by Mrs C.

Direct testimony from the consumer, in full and in their own words, is very 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.

I recognise the PR alleged in the Letter of Complaint that the membership was sold to Mr and Mrs C as an investment at the Time of Sale. And I appreciate that the Letter of Complaint was likely prepared by the PR following conversations with Mr and Mrs C - after

all, it contains personal information that only they would know. However, the Letter of Complaint (or claim) contains only a summary of Mrs C's allegations rather than any true insight into her perspective of the Sale. It does not particularly assist with the decision-maker's assessment of what motivated the purchase.

As part of its submission of evidence to this Service, the PR has provided a copy of a document titled "[PR] Terminations Client statement questions" form. This form appears to be completed by Mrs C, as it is signed by her and dated 5 March 2022 and most likely formed part of the PR's case preparation.

But I have some doubt as to how much weight I can place on the answers Mrs C has given in this questionnaire. I say this because, in my opinion, the content of the form itself is leading, suggesting several allegations that Mrs C could make with the option of "Yes" and "No" tick boxes for each. Rather than asking her to set out her own recollections of the sale, several possible representations appear to have been suggested to her already. This runs the risk that the answers given are not an accurate reflection of her memories, as the list of suggested allegations could influence her honestly held recollections¹.

For example, in the part of the questionnaire that focuses on the Fractional Club, the following questions are asked:

Fractional Products

Were you sold a fractional product where you were told that you were purchasing an investment?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Did they say you would make a profit from your purchase of the fraction?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Did they tell you the property would have an appreciating value?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Did they tell you it would sell for more than you paid?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Did they give you the impression that the property would be easy to resell?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Have you looked at the possibility of selling your fraction?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Was it as easy and profitable to sell as you were promised?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Did they show you the Deed of Trust?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

Additional Comments:

When ask to sell ow share
told we could not over the phone,
asked for more information never
heard for them again

Did they show you a BROCHURE during the sales presentation?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
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¹ See Susan Saunderson & Others v. Sonae Industria (UK) Ltd [2015] EWCA 2264 (QB), at para. 456

These questions are, in my view, leading, and suggestive of possible reasons for Mrs C to complain. Here I also note that there is some contradiction in Mrs C's answers. For example, I cannot reconcile Mrs C saying she "can't remember" when asked if they were told they would make a profit, and then ticking yes to being told the property would appreciate in value, and that it would be sold for more than they paid. And then further, when later asked to tick yes or no to the question "Did they say they would sell it and you would make money on it?" Mrs C has ticked "Yes". I find it hard to understand how, on one hand, Mrs C is saying they were told the property would increase in value, and that it would be sold for more than they paid for it, but she also says she cannot remember if they were told they could make a profit from their purchase.

There were then some questions about renting out their timeshare weeks:

Renting out weeks

Did sales staff encourage you to buy more points/weeks than you could use personally telling you that you could to rent out?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
	for sure.	
Did they say your ownership could become "self-funding"?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Did you buy extra product for this reason?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Did this self-funding become a reality?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

Additional Comments:

though we were investing for our retirement.

But this doesn't reflect the way that the Fractional Club worked where this particular Supplier is concerned. Other timeshare providers did have a process whereby unused weeks could be rented out, but not the Supplier in question here. And Mr and Mrs C have signed a form as part of the purchasing process called the Member's Declaration to acknowledge the following:

"We understand that [the Supplier], the Trustee or the Manager does not and will not run any resale or rental programmes..."

So, I think it inherently unlikely that the Supplier would have told Mr and Mrs C that they were able to rent them out, or that the membership could become self-funding because of this, and indeed, Mrs C has signed to say that she is aware it doesn't run such as system. So, in my view, this is further evidence that the tick-box nature of the form may have influenced Mrs C's answers.

And as regards the future price that the Allocated Property could achieve when sold, later in the Member's Declaration document it states:

"We understand that the purchase of our Fraction is for the primary purpose of holidays and is not specifically for direct purposes of a trade in and that [the Supplier] makes no

representation as to the future price or value of the Fractional Rights which are personal rights and not interests in real estate...”

And in the Information Statement, it states:

“Fractional Rights have been designed to be used and enjoyed and not bought with the expectation or necessity of future financial gain.” And: “The purchase of Fractional Rights is for the primary purpose of holidays and is neither specifically for the direct purposes of a trade in nor as an investment in real estate. [The Supplier] makes no representation as to the future price or value of the Allocated Property or any Fractional Rights.”

So, when taking into account the leading nature of the questions, and the apparent inconsistencies between what Mrs C says, and what other contemporaneous evidence shows, I do not feel I can place much, if any, weight on what has been said in this questionnaire.

That doesn't mean I've concluded that Mr and Mrs C weren'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, on my reading of the evidence, I am not persuaded that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr and Mrs C decided to go ahead with their purchase. I think, and as Mrs C has signed to agree, that they bought the membership for the holidays it could provide. As Mrs C herself 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 C'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 Mrs C and the Lender was unfair to her 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 C 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 also possible that the Supplier did not give Mr and Mrs C 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 Mrs C 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 Mrs C.

Mrs C's Commission Complaint

*I note that one of Mrs C'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 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 her.

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

The Lender responded to the PD and accepted it, and provided details of the commission that it had paid to the Supplier. The PR, on Mrs C's behalf, did not accept it, but provided no further evidence that it wished me to consider.

Following this, and further to my PD, I set out to both sides how I was not persuaded that Mrs C's credit relationship with the Lender was unfair to her for reasons relating to the commission arrangements between it and the Supplier.

The PR responded to say it had nothing further to add.

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.

Following the responses from both sides, I've considered the case afresh. And having done so, and because no new evidence has been submitted or arguments made in response to my initial findings, I see no reason to depart from the outcome as set out in the provisional decision above.

Given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with 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 Mrs C.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 10 February 2026.

Chris Riggs
Ombudsman