DRN-5985288

The complaint

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

What happened

Mr and Mrs O were members 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 their membership of a timeshare that I'll call the 'Signature Collection' – which they bought on 22 November 2017 (the 'Time of Sale'). They entered into an agreement with the Supplier to trade in their existing fractional points towards the purchase of 1,540 fractional points, which had a purchase price of £37,659. But after the trade-in value given to their existing points, they ended up paying £12,400 (the 'Purchase Agreement') for their Signature Collection membership.

The Signature Collection, like their previous membership, was asset backed – which meant it gave Mr and Mrs O 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. But, unlike their previous membership, the Signature Collection also provided Mr and Mrs O with guaranteed availability in their Allocated Property on a set week each year should they wish to use it. Alternatively, they could use their points to book accommodation from the Supplier's portfolio of resorts instead, but, like their previous membership, this availability was not guaranteed.

Mr O paid for their Signature Collection membership by taking finance of £12,400 from the Lender (the 'Credit Agreement') in his sole name.

Mr O – using a professional representative (the 'PR') – wrote to the Lender on 23 March 2022 (the 'Letter of Complaint') to raise a number of different concerns regarding their Signature Collection membership and the associated Credit Agreement. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender did not respond to Mr O's complaint within the eight weeks required by the regulator, so the PR, on Mr O's behalf, referred his complaint to the Financial Ombudsman Service. It was assessed by an Investigator at this Service who, having considered the information on file, rejected the complaint on its merits.

Mr O 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 Mr O'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.

Mr O's claims under Section 75 of the CCA

In the Letter of Complaint to the Lender, Mr O has said that the Supplier, at the Time of Sale, made misrepresentations upon which he and Mrs O relied when making their decision to purchase the Signature Collection membership. He also said that they were unable to book their chosen holidays due to problems with availability, which seems to be a complaint that the Supplier was not living up to its end of the bargain, and thus breaching the terms of the Purchase Agreement.

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.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mr O could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase. The purchase price must be more than £100 but no more than £30,000. So, if the purchase price of the product is in excess of £30,000 (irrespective of any trade-in allowance), a claim under Section 75 cannot succeed. But where the purchase price is in excess of £30,000, a claim can be considered under Section 75A of the CCA. But a claim under 75A can only relate to a 'breach of contract' – misrepresentation isn't included. I have gone on to say what I think this means in respect of Mr O's Section 75 claims.

The purchase price of Mr and Mrs O's Signature Collection was £37,659. As this is in excess of £30,000, I am satisfied that Mr O's claim under Section 75 cannot succeed.

But as I've said, Section 75A of the CCA allows for a claim should the price of the purchase be over £30,000, but only in relation to a breach of contract by the Supplier.

Mr O 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. So, I'm satisfied the claim includes an element which is an alleged breach of contract, so this could potentially be considered under Section 75A. There are other criteria in order for Section 75A to apply, but I don't consider that I need to make a finding on that because, as I go on to explain below, whether

it be under Section 75 or 75A, I do not think that the Lender was unfair or unreasonable when it did not accept Mr O's claim.

As I've said, the Signature Collection membership afforded Mr and Mrs O a guaranteed week's accommodation in their Allocated Property every year. Non-availability would only have been a concern for them if they chose to use their fractional points for accommodation in other properties from the Supplier's portfolio of resorts, and 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 O states that the availability of holidays was/is subject to demand. And I can see that Mr and Mrs O made use of their membership to take a number of holidays. So, 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 has breached the terms of the Purchase Agreement.

The PR also says on Mr O's behalf that the Supplier breached the Purchase Agreement because it went into liquidation. And if certain parts of the Supplier's business were put into administration, I can understand why the PR is alleging that there was a breach of the Purchase Agreement as a result. However, neither Mr O nor the PR have said, suggested or provided evidence to demonstrate that due to the liquidation they are no longer:

1. *Members of the Signature Collection;*
2. *able to use their Signature Collection membership to holiday in the same way they could initially; and*
3. *entitled to a share in the net sales proceeds of the Allocated Property when their Signature Collection membership ends.*

Section 75 - conclusion

From the evidence I have seen, I do not think the Lender is liable to pay Mr O any compensation for misrepresentation or a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in not accepting Mr O's claims under Section 75 of the CCA, so it doesn't need to do anything in this regard.

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

I've already explained why I'm not persuaded that a claim under Section 75 of the CCA ought to succeed. But there are 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 O 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 Mr O and the Lender.

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

Mr O'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:

- *Signature Collection was misrepresented to Mr and Mrs O at the Time of Sale;*
- *the right checks weren't carried out before the Lender lent to Mr O; and*
- *Mr and Mrs O were pressured by the Supplier into purchasing Signature Collection membership at the Time of Sale.*

However, as things currently stand, none of these strike me as reasons why this complaint should succeed.

It was said in the Letter of Complaint that Signature Collection membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs O were:

- *Told by the Supplier that Signature Collection membership had a guaranteed end date when that was not true; and*
- *Told by the Supplier that Signature Collection 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 Signature Collection Rules, Mr O says 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 O and the PR have concerns about the way in which Signature Collection membership was sold by the Supplier, when looking at whether an unfairness in the associated credit relationship has been caused, 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 Mr O's credit relationship was rendered unfair to him for reasons of misrepresentation.

I also 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 O 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 O.

And as regards the allegation that they were put under undue pressure, I acknowledge that

Mr and Mrs O may have felt weary after a sales process that went on for a long time. But they say 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 Signature Collection 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. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs O made the decision to purchase Signature Collection membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr O'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 Mr O. And that's the suggestion that Signature Collection membership was marketed and sold to him and Mrs O 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 O 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 Collection 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 Collection. They just regulated how such products were marketed and sold.

To conclude, therefore, that Signature Collection membership was marketed or sold to Mr and Mrs O 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 Signature Collection 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 Signature Collection 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 Collection as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs O, 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 Signature Collection membership as an investment. So, I accept that it's equally possible that Signature Collection membership was marketed and sold to Mr and Mrs O 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 O 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 O and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led Mr and Mrs O to enter into the Purchase Agreement, and Mr O into the Credit Agreement is an important consideration.

But on my reading of the evidence before me, the prospect of a financial gain from Signature Collection membership was not an important and motivating factor when Mr and Mrs O decided to go ahead with their purchase. I'm simply not persuaded that was the case. I'll explain.

As part of its submissions to this Service, the PR has sent us a statement from Mr O dated 2 September 2019. This set out his and Mrs O's recollections of their entire relationship with the Supplier, and their reasons for buying their various memberships.

As regards their Signature Collection purchase at the Time of Sale he said:

> *"In November 2017 we were on holiday in Tenerife. By this point we were very annoyed as we had all [sic] loads of points stacked up. We were informed that we were going to now lose them, because they had a time limit on them. By this time my ill health had worsened, and we were just not able to use them. We knew that we would never be able to get through the amount of points that we had left.*
>
> *Being told that we were going to lose something we had spent so much money on, was so frustrating. So, we went to the reps and asked to have a meeting with the manager, as we wanted out of our contract. I went straight into the sales office and demanded someone from their legal department come and speak to me. One of the reps came over and sat me down and wanted to talk about how we could overcome our problems. I told him all about our problems and how bad my health had gotten. He told me what he would be able to do was change our contract and instead of losing out on points, when we were unable to use our timeshare, they would rent it out for us. He said we would be able to exchange our weeks and we could use them whenever we were able to. And we would have a [sic] more flexibility and availability and being able to rent it, and all of this would solve our problems. I really did not want to enter into this agreement, and I told them this over and over. I felt like I was in this room for hours and in the end, I was so exhausted I agreed."*

On my reading of this, Mr and Mrs O were finding that due to Mr O's worsening health they were unable to use all of their points. Having looked at the membership they held at that time, I can see it afforded Mr and Mrs O the right to three weeks' accommodation every year, and it seems they were frustrated that something that they had spent money on was going to waste, because they were unable to take that many holidays.

But what Mr O describes being told by the salesperson doesn't suggest to me that the Signature Collection was sold to them as an investment, nor that that was the reason Mr and Mrs O bought it. It seems it was sold to them as a way to maintain their membership, but not waste the points through non-usage. Afterall, the change from their existing membership to the Signature Collection meant that they had fewer points – reducing from three weeks to one – but the holidays they could take would afford them guaranteed availability in what was described as a more luxurious and better-appointed property than what was available to them previously. And in addition to that, their annual maintenance fee would also reduce significantly. There is simply no suggestion in what Mr O has said here that they were motivated to make this purchase for the potential profit from the eventual sale of the Allocated Property.

That doesn't mean they 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 as Mr O himself doesn't persuade me that their purchase of the Signature Collection 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 Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs O's decision to purchase Signature Collection 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 O 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 O 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 O 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 O 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 O.

Mr O's Commission Complaint

I note that one of Mr O'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 I understand the commission arrangements relevant to Mr O's complaint, I will address this aspect of the complaint before finalising my thoughts overall.

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(s), 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 O 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 O."

The responses to the provisional decision

The Lender responded to the PD and accepted it, and provided details of the commission arrangement that it had with the Supplier in this case. The PR, on Mr O'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 Mr O'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.

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 Mr O's Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement that was unfair to him 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 Mr O.

My final decision

I do not uphold this complaint.

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

Chris Riggs
Ombudsman