

The complaint

Mr S'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 them 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.

Background to the complaint

Mr and Mrs S purchased membership of a timeshare from a timeshare provider (the 'Supplier') – making the following purchases on the dates below:

- 1,501 non-fractional points on 6 January 2011 for £20,354 – but after trading in their existing trial membership, the price became £16,359 ('Purchase Agreement 1');
- 1,888 fractional points on 6 November 2012 for £9,886 – having traded in the first lot of 1,501 points ('Purchase Agreement 2');
- 2,340 fractional points on 20 October 2014 for £7,815 – having traded in the second lot of 1,888 fractional points ('Purchase Agreement 3').

As this complaint is only concerned with the first purchase, 6 January 2011 is the 'Time of Sale' for the purposes of my decision.

Mr S paid for Purchase Agreement 1 by taking a loan of £18,559 from the Lender, which I'll refer to as the 'Credit Agreement'. As that loan was in his sole name, he is the only eligible complainant. That loan was for more than the purchase price because it consolidated an existing loan with a third party. This new loan was itself consolidated by a second loan from the Lender to finance Purchase Agreement 2.

Purchase Agreement 3 was financed by a loan from a third party, and so it is not part of this complaint.

Mr S – using a professional representative (the 'PR') – wrote to the Lender on 10 April 2018 (the 'Letter of Complaint') to raise a number of different concerns about Purchase Agreements 1 and 2. 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 dealt with Mr S's concerns as a complaint and issued its final response letter on 2 May 2018, rejecting it on every ground. But in December 2023, the Lender revised its position regarding Purchase Agreement 2, and made an offer of compensation to Mr S, which he accepted. I have been told that this compensation has been paid, and it does not appear that the PR is pursuing Mr S's complaint about that. So the rest of this decision only concerns Purchase Agreement 1.

Meanwhile, the complaint had been referred to the Financial Ombudsman Service. It was assessed by an investigator who, having considered the information on file, rejected the complaint about Purchase Agreement 1 on its merits.

Mr S disagreed with the investigator's assessment and asked for an ombudsman's decision – which is why it was passed to me.

I issued my provisional findings to the parties on 11 November 2025. In my provisional decision, I said the following:

My provisional findings

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.

However, under the Limitation Act 1980, a claim for misrepresentation has to be brought within six years of the Time of Sale. As Mr S's claim was brought after that deadline had expired on 6 January 2017, that gives the Lender a complete defence to his claim, and so I do not uphold his complaint about that.

I can however still consider the alleged misrepresentations as potential grounds for finding unfairness under section 140A.

Section 75 of the CCA: the Supplier's breach of contract

For a claim for breaches of contract, the limitation period is six years from each breach. As some of the alleged breaches may have happened less than six years before Mr S complained in April 2018, I will consider them on their merits.

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, then the Lender is also liable.

Mr S says that he could not holiday where and when he wanted to. That was framed, in the Letter of Complaint, as part of his complaint about the fairness or otherwise of his credit relationship with the Lender under section 140A of the CCA. However, on my reading of the complaint, this 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 S states that the availability of holidays was/is subject to demand. It also looks like he made use of his fractional points to holiday on a number of occasions. I accept that he may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

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

The limitation period for a claim under section 140A is six years from the end of the credit relationship. In this case, that is six years from when the loan was consolidated in late 2012. So this claim was brought in good time.

Having considered the entirety of the credit relationship between Mr S 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 sales given their circumstances.

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

Misrepresentation

Mr and Mrs S¹ say that they were told they could sell their points whenever they wished, but that this was untrue because there was no market for them. But it's not clear that the Supplier was making representations to them about the market, as opposed to just telling them that they had the right to sell. So I am not persuaded that there was an actionable misrepresentation.

Mr and Mrs S also say that they were misled by the Supplier about the annual fees. I will deal with this issue below, in the section titled 'provision of information'.

The Supplier's sales and marketing practices at the Times of Sale

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

¹ A credit relationship can be unfair under section 140A because of things done or said to a party to the related purchase agreement, which includes Mrs S. (See sections 19 and 140C(4)(b) of the CCA.)

They include, for various reasons, the allegation that the Supplier misled Mr S and carried on unfair commercial practices under regulations 5 and 6 of the CPUT Regulations.² However, as regulations 5 and 6 state, commercial practices only amount to misleading actions or omissions if, in addition to satisfying one or more of the specific matters set out in those provisions, they cause or are likely to cause the average consumer to take a transactional decision they would not have taken otherwise. And as I haven't seen enough evidence to persuade me that, if there were any such actions or omissions at the Time of Sale (which I make no formal finding on), they led Mr S to make the purchasing decision he did, I'm not persuaded that anything done or not done by the Supplier amounted to an unfair commercial practice for the purposes of those provisions.

The PR also alleges that the Supplier acted unfairly under regulation 7 Schedule 1 of the CPUT Regulations. But given the limited evidence in this complaint, I am not persuaded that the Supplier did.

In addition, the PR also says that:

1. the right checks weren't carried out before the Lender lent to Mr S;
2. Mr and Mrs S were pressured by the Supplier into purchasing timeshare membership at the Time of Sale;
3. there was one, or more, unfair contract terms in Purchase Agreement 1.

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 Mr S 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 S.

I acknowledge that Mr and Mrs S may have felt weary after sales processes that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentations that made them feel as if they had no choice but to purchase timeshare 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. Moreover, they did go on to upgrade their first purchase – which I find difficult to understand if the reason they went ahead with the purchase in question was because they were pressured into it. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs S made the decision to purchase timeshare membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

As for the PR's argument that there were one or more unfair contract terms in Purchase Agreement 1, I can't see that any such terms were operated unfairly against Mr and Mrs S in practice, nor that any such terms led them to behave in a certain way to their detriment. And with that being the case, I'm not persuaded that

² The Consumer Protection from Unfair Trading Regulations 2008.

any of the terms governing timeshare membership are likely to have led to an unfairness that warrants a remedy.

Overall, therefore, I don't think that Mr S's credit relationship with the Lender was rendered unfair to him under section 140A for any of the reasons above.

The provision of information by the Supplier at the Times of Sale

The PR says that Mr and Mrs S were not given sufficient information at the Times of Sale by the Supplier about the ongoing costs of timeshare membership. The PR also says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

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.

I acknowledge that it is also possible that the Supplier did not give Mr and Mrs S sufficient information, in good time, on the various charges they could have been subject to as timeshare members in order to satisfy the requirements of section 1A of the Timeshare Act 1992 (which was concerned with the provision of information to consumers). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mr and Mrs S nor the PR have persuaded me that they would not have pressed ahead with their purchase had the finer details of the timeshare's ongoing costs been disclosed by the Supplier, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its facts and circumstances.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mr and Mrs S in practice, nor that any such terms led them to behave in a certain way to their detriment. And with that being the case, I'm not persuaded that any of the terms governing timeshare membership are likely to have led to an unfairness that warrants a remedy.

[...]

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 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 S under the Credit Agreements 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 him.

My addendum provisional decision

At the time of my provisional decision I deferred my conclusions on the matter of commission disclosure in order to review that issue further. I've since written to the parties setting out my thoughts on why I wasn't persuaded to uphold this aspect of the complaint.

Applying the principles and factors set out in the Supreme Court judgment³ handed down on 1 August 2025, I found nothing to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr S. Nor did I see anything that persuaded me that the commission arrangements between them gave the Supplier a choice over the interest rate which led Mr S into a credit agreement that cost disproportionately more than it otherwise could have.

Further, the flat rate and amount of commission paid was such that it gave me no reason to think that any failure to disclose it to Mr S had a material impact on his decision to enter into the Credit Agreement. At £1,250:88, it was only 6.74% of the amount borrowed and even less than that (3.97%) as a proportion of the charge for credit. That didn't strike me as disproportionate; nor were the surrounding circumstances otherwise capable of rendering unfair the credit relationship between the Lender and Mr S such that the Lender needed to take any action in redress.

I didn't find any of the other arguments put forward demonstrated that the credit agreement between Mr S and the Lender was unfair to him under section 140A of the CCA. Absent any other reason why it would be fair or reasonable to direct the Lender to compensate Mr S, I said I didn't propose to uphold the complaint.

Responses to my provisional findings

The Lender accepted my provisional decision. The PR didn't accept the proposed outcome. It made further submissions in support of Mr S's position. Having received and reviewed these, I'm now proceeding with my final decision.

In doing so, I'm conscious that the PR has made a series of assertions surrounding the provision of information relating to commission arrangements. These include, among other things, expressing doubt that the Lender has provided key information, requesting that the information we have received be shared with it in full, and asking that we do not proceed with a decision before this is done and it has had an opportunity to make further submissions.

The PR's requests have been addressed by us under separate correspondence. For reasons I will explain in the course of this decision, I've concluded that it's appropriate for me to proceed with my determination.

The legal and regulatory context

The legal and regulatory context that I think is relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in previous correspondence with the parties. So there's no need for me to set this out again in detail here. I simply remind the parties that our rules⁴ say that in considering what is fair and reasonable in all the circumstances of the complaint, I will 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.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

³ *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ("*Hopcraft, Johnson and Wrench*").

⁴ Financial Conduct Authority ("FCA") Handbook – DISP 3.6.4R ("R" denotes a rule).

reasonable in the circumstances of this complaint.

After considering the case afresh and having regard for what's been said in response to my provisional decision and in my subsequent correspondence, I find it offers no persuasive reason to depart from the conclusions I've previously set out. I'll explain why.

The PR originally raised various points of complaint, such as those giving rise to Mr S's section 75 claim, which I addressed in my provisional decision. In its response, it hasn't made any further comments in relation to most of its original points, or said anything that leads me to think it disagrees with my provisional conclusions in relation to those points. So I'll focus here on the points the PR *has* made in response.

The PR's response to my provisional decision relates mainly to the issue of whether the credit relationship between Mr S and the Lender was unfair *per* section 140A of the CCA. In particular, the PR has repeated that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship between the Lender and Mr S. It has repeated and elaborated on the allegations about high pressure sales tactics. It argued that it was wrong of the Supplier to sell Mr S an upgrade before his trial membership had finished, and before he had even taken a holiday using his trial membership; it described this as a "bait and switch". And it said that as the Lender had upheld Mr S's separate complaint about his 2012 loan, I should uphold this one too.

(The PR also argued that the limitation period had been extended under section 32 of the Limitation Act, due to the concealment of relevant facts. But I don't think I need to consider that point, because I considered every complaint point on its merits. My findings about misrepresentation under section 140A would not have been different if I had considered that issue under section 75 instead.)

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

The provision of information by the Supplier at the Time of Sale

The PR has asked for the documents the lender has provided to us to show the commission arrangements. While I appreciate the PR would like to have full disclosure of all of the documents and information the Lender has provided, our rules do not require me to provide this when dealing with a complaint.

As the PR has been informed, under DISP 3.5.9R I may, where I consider it appropriate, accept information in confidence (so that only an edited version, summary or description is disclosed to the other party). That is what I have done in my provisional decision. I'm satisfied that agreements between the Lender and the Supplier are commercially sensitive and that the summary information on commission arrangements we've already shared with the PR is appropriate in this case.

I see no reason to find that this prejudices any arguments the PR or Mr S are able to make in support of Mr S's position. The PR has demonstrated its ability to present Mr S's case and has had sufficient time to consider and make any further arguments.

As I've noted, the PR has disagreed with my provisional conclusions on whether the Lender should pay redress because of an unfair credit relationship arising in connection with commission arrangements between the Lender and the Supplier. The PR says, in summary, that when the overall circumstances of those arrangements are considered in the round, the credit relationship was plainly unfair. In support of this position the PR has expressed, among other things, that:

- The provisional decision doesn't properly apply the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, which concluded a range of factors informed whether a credit relationship between a consumer and a lender was unfair;
- A conflict of interest existed on the part of the Supplier, who provided neither independent nor competent explanation of the credit;
- Failure to disclose payment of commission – irrespective of the size of any payment - was a regulatory breach that goes to the heart of fairness.

I appreciate the time the PR has taken to put together its submissions on behalf of Mr S. But I don't find what it has said offers persuasive grounds for me to reach a different conclusion on this issue.

I've previously set out my thoughts on any impact the Supreme Court's conclusions in *Hopcraft, Johnson and Wrench* has on Mr S's arguments that his credit relationship with the Lender was unfair to him for reasons relating to commission given the facts and circumstances of this complaint.

The PR's response doesn't offer anything that leads me to think that, for the most part, any of the factors it has referenced were in fact at play in Mr S's case. It hasn't, for example, provided evidence to show the existence of commercial or contractual ties that were concealed from Mr S, any persuasive reasons to conclude that the Supplier's role was that of advisor to Mr S, or to show that any other conflict of interest arose from the roles the Supplier did perform.

For such a claim to be successful would require more than the bare assertions that have been made in this case. I'm not persuaded that it is sufficient, as the PR seems to contend, simply to suggest unsubstantiated allegations of fact and require that the Lender disprove them or else the credit relationship be deemed unfair. This issue was considered in the judgment in *Promontoria (Henrico) Ltd v. Gurcham Samra* [2019] EWHC 2327 (Ch) ("*Samra*"), where HHJ David Cooke held (at paragraph 26):

"...the onus is on the claimant⁵ to show, to the normal civil standard, that the relationship is not unfair because of any of the reasons set out in s 140A(1)(a)-(c). Whether it is so unfair is a matter for the court's overall judgment having regard to all the relevant circumstances and matters, including matters relating (i.e. personal) to the creditor and debtor. This onus on the claimant does not however mean, in my judgement...that where Mr Samra⁶ makes allegations of fact on which he relies he does not have the burden of proving them to the normal civil standard. The onus placed on the creditor is as to the relationship between it and the debtor, and does not have the effect that factual allegations made by Mr Samra must be accepted unless they can be positively disproved by contrary evidence."⁷

⁵ In this case the creditor answering a claim of an unfair credit relationship arising out of an overdraft facility.

⁶ In this case the borrower making an allegation that there was an unfair credit relationship.

⁷ I further note that in *Wilson v Clydesdale Financial Services Ltd t/a Barclays Partner Finance* [2021] (unreported), the court also took the view that the burden is on the debtor to prove on the balance of probabilities *the facts* that purportedly create the unfairness. It is then that the lender's burden of proof that requires it to prove *the relationship* was not unfair kicks in. While I do not suggest this offers legal precedent, the subject matter of that case was a fractional timeshare sale, and given the similarities seems to me an appropriate approach when considering the facts in this case.

I'm satisfied the Lender has provided sufficient information in response to my enquiries to enable me to reach a conclusion about its commission arrangements with the Supplier. I've seen nothing in this case that leads me to think what the Lender has said about the commission arrangements is inaccurate. So there's no reason for me to reach a different finding over those commission arrangements.

In its correspondence the PR has emphasised the regulatory breaches connected with a failure to disclose commission payment. I have already set out why in my view this doesn't automatically lead to an unfair credit relationship for which the Lender needs to offer redress. While I've considered all that the PR has submitted, I remain of that view.

Other causes of unfairness

I remain of the view that the 14-day cooling-off period cures any unfairness that might otherwise have resulted from any high pressure sales tactics.

I think it was Mr S's choice to upgrade his membership before the trial period was over. He was sufficiently impressed by the quality of accommodation in 2011 to decide to upgrade without needing to use up the whole trial membership, and the cost of the trial membership was offset against the cost of the upgrade, so I don't see that this was unfair to him.

Finally, just because the Lender accepts that there was a mis-sale in 2012 it does not follow that there was a mis-sale in 2011. Each sale has to be considered on its own facts.

Section 140A: Conclusion

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I remain unpersuaded that the credit relationship between Mr S and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him such that it warrants the Lender offering any redress.

Commission: The alternative grounds of complaint

In my previous correspondence I mentioned that some of the grounds for complaint about the fairness or otherwise of the credit relationship could also constitute separate and freestanding complaints. I'll reiterate my findings here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr S (that is, secretly). The second relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

For the reasons I set out previously, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr S a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to him. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint. For the reasons I have also previously set out, I think he would still have taken out the loan to fund his purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Conclusion

After careful reconsideration of the facts and circumstances of this complaint, I adopt my provisional conclusions as part of my final decision. For the reasons I've given above and in my earlier correspondence I've mentioned, I don't think the Lender acted unfairly or unreasonably when it dealt with Mr S's section 75 claim. And I'm not persuaded that the Lender was party to a credit relationship with Mr S that was unfair to him for the purposes of section 140A of the CCA. Having taken everything into account, I see no other reason why it would be fair or reasonable for me to direct the Lender to compensate Mr S.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 March 2026.

Richard Wood
Ombudsman