DRN-6013787

The Complaint

Ms M'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 a claim under Section 75 of the CCA.

Background to the Complaint

Ms M purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 27 August 2015 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 1,040 fractional points at a cost of £16,898 (the 'Purchase Agreement').

Ms M paid for her Fractional Club membership by taking finance of £16,898 from the Lender (the 'Credit Agreement').

Fractional Club membership was asset backed – which meant it gave Ms M 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 ends.

Ms M – using a professional representative (the 'PR') – wrote to the Lender on 8 February 2024 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns have not changed since they were first raised, and as both sides are familiar with them, it is not necessary to repeat them in detail here beyond the summary above.

The Lender did not provide a response to Ms M's complaint so it was referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

I issued a provisional decision ('PD') dated 27 November 2025, concluding the complaint should not be upheld. The findings from my PD are set out below.

> *"**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 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 here.*

What I have provisionally decided – and why

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 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. However, it is not necessary to make any formal findings on them here as I need to take into account the Limitation Act 1980 (the "LA").

Ms M purchased her membership in August 2015. Although a court is only able to make a ruling under the LA, as it is relevant law, I have also considered any impact this may have on Ms M's claim under Section 75 of the CCA.

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 under Section 75, like this one, 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 here was the Time of Sale. I say this because Ms M entered into the purchase of the timeshare product at that time based upon the alleged misrepresentations of the Supplier – which Ms M says she relied upon. And as the Credit Agreement with the Lender provided funding to help finance that purchase, it was when she entered into the Credit Agreement that she allegedly suffered the loss.

Ms M first notified the Lender of her Section 75 complaint in February 2024. As more than six years had passed between the Time of Sale and when she first put her complaint to the Lender, I cannot conclude that the Lender should accept responsibility for such a claim.

However, I have considered whether these alleged misrepresentations could have been something that caused an unfair credit relationship.

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 am to consider this complaint in full – which is what I have done next.

Having considered the entirety of the credit relationship between Ms M and the Lender along with all of the circumstances of the complaint, I do not 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, when relevant
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 Ms M and the Lender.

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

Ms M's complaint about the Lender being party to an unfair credit relationship was made for several reasons.

However, I have firstly considered whether the misrepresentations she alleges were made by the Supplier in the context of her Section 75 claim could have caused any unfairness for the purposes of Section 140A.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Ms M was:

1. Told that she had purchased an investment that would "considerably appreciate in value" when that was not true.
2. Told that she would own a share in a property that would increase in value during the membership term when that was not true.
3. Made to believe that she would have access to "the holiday apartment" at any time all year round when that was not true.

However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). 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. And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there is not enough evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

As for point 3, while it is possible that Fractional Club membership was misrepresented at the Time of Sale for that reason, I do not think it is probable. She has given little to none of the colour or context necessary to demonstrate that the Supplier made a false statement of existing fact and/or opinion. And as there is not any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for that

reason, I do not think it was.

So, while I recognise that Ms M and the PR have concerns about the way in which Fractional Club membership was sold by the Supplier, I do not think this caused any unfairness in Mr M's credit relationship with the Lender such that it warrants a remedy.

Turning to the points specifically raised in relation to the potential unfairness of the relationship between consumers and the Lender, the PR says, for instance, that the right checks were not carried out before the Lender lent to Ms M. I have not seen anything to persuade me that was the case in this complaint given its 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 Ms M 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 Ms M.

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 was not permitted to enforce the Credit Agreement. However, it looks to me like Ms M 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 Fractional Club membership.

And as the lending does not look like it was unaffordable for her, even if the Credit Agreement was arranged by a broker that did not have the necessary permission to do so (which I make no formal finding on), I cannot see why that led to a financial loss for Ms M – 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 am not persuaded that it would be fair or reasonable to tell the Lender to compensate her, even if the loan was not arranged properly.

I acknowledge that Ms M may have felt weary after a sales process that went on for a longtime. But she says little about what was said and/or done by the Supplier during her sales presentation that made her feel as if she had no choice but to purchase Fractional Club membership when she simply did not want to. She was also given a 14-day cooling off period and she has not provided a credible explanation for why she did not cancel her membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Ms M made the decision to purchase Fractional Club membership because her ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I do not think that Ms M'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 says the credit relationship with the Lender was unfair to her. And that is the suggestion that Fractional 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 Ms M's Fractional 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 Fractional 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 says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Ms M was told by the Supplier that Fractional 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 Ms M 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 does not 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 Ms M 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 Fractional 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 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 Ms M, 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 Fractional Club membership as an investment. So, I accept that it is equally possible that Fractional Club membership was marketed and sold to Ms M 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 is 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 had on the fairness of the credit relationship between Ms M 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 Ms M 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. To help me decide this point, I have carefully considered what Ms M has said in the course of her complaint about how the membership was sold to her and her motivation for taking it out.

As I have stated above, it is said within the Letter of Complaint that Ms M was told that she had purchased an investment that would increase in value. There was no further detail underpinning this statement within the Letter of Complaint. But as I have said, I accept that it is possible that the Supplier positioned Fractional Club membership as an investment but what I need to establish is whether such positioning was material to Ms M's decision to purchase the membership.

The PR has provided a statement from Ms M containing her recollections from the Time of Sale. Within this, Ms M says:

"In the presentation we were asked again if we did own a mortgage in the UK which we said yes that's when they [sic] we can buy shares in the company by buying a time share which we tried to ask them to explain what we get after the contract ended and they could not tell us how much we were going to get".

By Ms M's own admission, if the Supplier could not say how much Ms M may receive at the end of her membership term, I find it highly unlikely Ms M was materially motivated by the prospect of a profit or financial gain when deciding to purchase Fractional Club membership.

Ms M goes on to explain:

"We tried to argue on the fact that as we were paying the fractional timeshare and also paying maintenance fees that meant that we owned the room they would not tell us how much we would get at the end contract. At this moment we thought it was not worth it because we were going into a deal which we did not know how much we were getting out of it. At this point they started to give us more freebees like they were going to give us an iPad..
…
In addition, they offered to drive us to their other resort which is nearby where they showed us more nicer apartments which they said we could use. The day was so tiresome so after all our concerns were all ignored and offered more nicer things we then agreed to sign into the programme although all our questions were not answered to our certificating."

Considering what Ms M has said, it seems like she may have been incentivised to purchase her membership based on the holiday rights and other benefits that the Supplier

offered her.

Looking at her reservation history, I can see Ms M has made several bookings, suggesting her interest in the holiday rights her membership offers. Taking everything into consideration, I don't think the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when she decided to go ahead with her purchase.

That does not mean she was not interested in a share in the Allocated Property. After all, that would not be surprising given the nature of the product at the centre of this complaint. But as Ms M herself does not persuade me that her purchase was motivated by her share in the Allocated Property and the possibility of a profit, I do not think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision Ms M 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 Ms M'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 she would have pressed ahead with her 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 Ms M 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 Ms M was not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club 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 have 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 Ms M sufficient information, in good time, on the various charges she could have been subject to as Fractional Club members in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Ms M nor the PR have persuaded me that she would not have pressed ahead with her purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I cannot see that any such terms were operated unfairly against Ms M in practice, nor that any such terms led her to behave in a certain way to her detriment. And with that being the case, I am not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

Insolvency of the Supplier and its implications on the Credit Agreement

The PR argues that, because the Supplier's Spanish based sales companies have closed, Ms M will not recover any amounts that are expected to be awarded by the Spanish court. But this is of no impact on the complaint because (1) I cannot see that the Supplier (i.e., company that entered into the Purchase Agreement) is itself the subject of a court judgment in Ms M's favour nor can I see that the Lender has been party to any court proceedings and (2) even if he had a claim for something, there is no explanation as to why the Lender would be responsible to answer it.

Overall, given the facts and circumstances of this complaint, I am not persuaded that it would be fair or reasonable to uphold it for this reason.

Ms M's Commission Complaint

I note that one of Ms M'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 Ms M 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, 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 Ms M 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."

I gave both parties the opportunity of responding and providing any further information or argument before I made my final decision. The Lender responded and said it agreed with my PD and provided information relating to the commission arrangements between them and the Supplier.

The PR also responded on behalf of Ms M and did not accept the PD and provided some further comments it wanted to be taken into account. It also raised, for the first time, an allegation that the payment of a commission by the Lender to the Supplier caused an unfair credit relationship.

Having read everything, I sent the following email to both parties:

"In my provisional decision, I noted that one of Ms M's other concerns related to the alleged payment of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. But, I said that the Supreme Court's pending (at that time) judgment on this issue may prove important to this complaint. So, I explained that I would not finalise my thoughts on this complaint until it had been handed down and I had considered its implications on this complaint, if there are any.

As that has now happened and I have considered it, I am outlining my thoughts on this issue in this letter so that both parties have the opportunity to respond before I finalise 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.

In my provisional decision, I explained that 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 I said that with that being the case, it is not necessary to set out that context in detail here. But, following my provisional decision, 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*

The Provision of Information by the Supplier at the Time of Sale

The PR says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 ('Hopcraft, Johnson and Wrench').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and

Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. *The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship…was unfair" (see paragraph 327);*
2. *The failure to disclose the commission; and*
3. *The concealment of the commercial tie between the car dealer and the lender.*

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. *The size of the commission as a proportion of the charge for credit;*
2. *The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);*
3. *The characteristics of the consumer;*
4. *The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and*
5. *Compliance with the regulatory rules.*

From my reading of the Supreme Court's judgment in Hopcraft, Johnson and Wrench, it sets out principles which apply to credit brokers other than car dealer–credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, Hopcraft, Johnson and Wrench is relevant law that I am required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I do not think Hopcraft, Johnson and Wrench assists Ms M in arguing that her credit relationship with the Lender was unfair to her for reasons relating to commission given the facts and circumstances of this complaint.

I have not seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that was not properly disclosed to Ms M, nor have I seen anything that persuades me that the commission arrangements between them gave the Supplier a choice over the interest rates that led Ms M into the credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it is possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But as I have said before, 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. And with that being the case, it is not necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I do not currently think any such failure is itself a reason to find the credit relationships in question unfair to Ms M.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Ms M entered into was not high. At £422.45 it was only 2.5% of the amount borrowed and even less than that

(2.32%) as a proportion of the charge for credit. So, had she known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I am not currently persuaded that she either would not have understood that or would have otherwise questioned the size of the payment at that time. After all, Ms M wanted Fractional Club membership and had no obvious means of her own to pay for it. And at such a low level, the impact of commission on the cost of the credit she needed for a timeshare she wanted does not strike me as disproportionate. So, I think she would still have taken out the loan to fund her purchase at the Time of Sale had the amount of commission been disclosed.

What is more, based on what I have seen so far, the Supplier's role as a credit broker was not a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I cannot see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it was not acting as an agent of Ms M but as the supplier of contractual rights they obtained under the Purchase Agreement, the transaction does not strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to her when arranging the Credit Agreement and thus a fiduciary duty.

Overall, therefore, I am not currently persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Ms M.

So, given all of the factors I have looked at both here and in my provisional decision, and having taken all of them into account, I am still not persuaded that the credit relationship between Ms M and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her. And as things currently stand, I do not think it would be fair or reasonable that I uphold this complaint on that basis.

Commission: The Alternative Grounds of Complaint

While I have provisionally found that Ms M's credit relationship with the Lender was not unfair to her for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Ms M's complaint about an unfair credit relationship. So, for completeness, I have considered those grounds on that basis 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 Ms M (i.e., secretly). And 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.

However, for the reasons I set out above, I am not persuaded that the Supplier – when acting as credit broker – owed Ms M a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission are not, in my view, available to her. And while it is 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 do not think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think she would still have taken out the loan to fund her purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Overall Conclusion

So again, in conclusion, given the facts and circumstances of this complaint, I still do not think that the Lender acted unfairly or unreasonably when it dealt with Ms M's Section 75 claim. I am also not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement and related Purchase 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."

The Lender responded and accepted my finding and had no further comments to make. The PR did not respond.

As the time frame for both parties to respond has passed, I am now finalising my decision.

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 PD only relate to the issue of whether the credit relationship between Ms M and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Ms M as an investment at the Time of Sale.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But it didn't make any further comments in relation to those in their response to my PD. Indeed, it hasn't said it disagrees 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 PD. So, I'll focus here on the PR's points raised in response.

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

The PR has highlighted under Section 140B (9) of the CCA, the burden of proof falls on the Lender to disprove the allegation that its relationship with Ms M was unfair. I agree that this is correct, placing a burden on lenders during the process of litigation. That does not mean, though, that the Lender – or I – should take a claim at face value. There remains an onus on Ms M to provide some evidence for the claim she is making, despite the overall burden of proof resting with the Lender, as was set out in the judgment in *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34 at paragraph 40. I also remind both parties that it is

my role to make findings on what I consider to be fair and reasonable in all the circumstances of any given complaint.

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

In its response to my PD, the PR has reasserted its view that the Supplier marketed the Fractional Club membership to Ms M as an investment and that this was a motivating factor in her decision.

I accepted in my PD that the membership may well have been marketed as an investment to Ms M in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. I also explained that while the Supplier's sales processes left open the possibility that the sales representative may have positioned Fractional Club membership as an investment, it wasn't necessary for me 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 response to my PD hasn't changed my view of this, and so whether the Supplier's breach of Regulation 14(3) led Ms M to enter into the Purchase Agreement and the Credit Agreement remains an important consideration.

In my PD I explained the reasons why I didn't think any breach of Regulation 14(3) had led Ms M to proceed with her purchase. In short, I was not persuaded that her decision was motivated by the prospect of a financial gain (i.e., a profit). In reaching that view, I took into account the testimony given by Ms M in the course of her complaint. I recognise the PR has interpreted Ms M's testimony differently to how I have, and I have carefully considered its further comments. Ultimately though, they have not led me to a different conclusion.

In her witness statement, Ms M said:

"In the presentation we were asked again if we did own a mortgage in the UK which we said yes that's when they [sic] we can buy shares in the company by buying a time share which we tried to ask them to explain what we get after the contract ended and they could not tell us how much we were going to get."

The PR says Ms M seems to have been persistent in trying to obtain indicative figures as to how much she would receive and although the Supplier did not provide this information, they say it is likely she accepted this as a positive. It's clear Ms M queried how much she may receive at the end of her membership term, but she herself '*thought it was not worth it*' as she did not know how much she was going to get. Ms M did not say she was going to make a profit, or believed she would, as a result of this purchase nor is there any indication in what she's said that she was motivated by the potential of a profit. Having reconsidered everything again, I remain unpersuaded that any breach of Regulation 14(3) was material to Ms M's purchasing decision.

The PR objects to the approach I've taken in assessing this aspect of the complaint, believing that I have detracted from the judgment in *Shawbrook & BPF v FOS*[1] and the case law that contributed to it, by requiring Ms M to have been "primarily or mainly motivated" by the investment element in order to uphold the complaint. But I did not make such a finding. I said that, in my view, Ms M was incentivised to purchase her membership based by the holiday options and other benefits offered to her by the Supplier – which was a factor in my

[1] R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS').

overall conclusion in light of all the available evidence that she would, on balance, have pressed ahead with her purchase of the Fractional Club membership even if there had been a breach of Regulation 14(3).

Within her witness statement Ms M says:

"After joining the timeshare, we then tried to book for holidays and most of the resorts we wanted were said to be unavailable on the days which we wanted them, so we had to book the ones they offered us. This made us like we had not much choice but to book the ones available of which we were afraid to lose our points."

The PR says this statement does not underpin the view that the holiday benefits was the most important and motivating favour in Ms M's decision to purchase it.

Like any holiday accommodation, availability was not unlimited so I accept Ms M may not have always been able to take holidays to her preferred destinations and this was made clear on the paperwork she signed. In my PD, I did not say that Ms M purchased her membership based on guaranteed availability. Rather, her recollections, in my opinion, suggest that she entered into the agreement based on the holiday rights and other benefits that the Supplier offered her at the Time of Sale and nothing in what the PR has said has changed my view on that.

So for the reasons given in my PD and above, I still do not think that any breach of Regulation 14(3), if there was one, was material to Ms M's decision to purchase the Fractional Club membership.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Ms M's Section 75 claim, 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 set out above, I don't uphold this complaint.

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

Sameena Ali
Ombudsman