

The complaint

Mr B complains Clydesdale Financial Services Limited (trading as Barclays Partner Finance) (the “Lender”) has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the “CCA”) and has participated in an unfair credit relationship with him under Section 140A of the CCA.

Mr B is represented in his complaint by a professional representative (“PR”).

What happened

I issued a provisional decision on Mr B’s complaint on 24 September 2025, in which I set out the background to the case and my provisional findings on it. A copy of that provisional decision is appended to, and forms a part of, this final decision, so it’s not necessary to go over the details again. However, in very brief summary:

- Mr B bought a timeshare from a timeshare provider (the “Supplier”) on 17 May 2017 (the “Time of Sale”), for £9,265 (after a trade in of an existing timeshare for £14,500). This was financed by a loan of the same amount from the Lender (the “Credit Agreement”).
- The timeshare was a type of asset-backed timeshare which entitled Mr B to more than holiday rights. It also entitled him to a share in the proceeds of a property named on his purchase agreement (the “Allocated Property”) after his contract came to an end.
- Mr B later complained, first by himself and then via a professional representative (“PR”), to the Lender about a number of concerns which included misrepresentations by the Supplier giving Mr B a claim against the Lender under Section 75 of the CCA, and matters giving rise to an unfair credit relationship between Mr B and the Lender.
- The Lender rejected the complaint and it was then referred to the Financial Ombudsman Service for an independent assessment.

In my provisional decision I said I didn’t think the complaint should be upheld. Again, my full findings can be found in the appended provisional decision, but in very brief summary:

- The Lender had not been unfair or unreasonable in declining Mr B’s Section 75 claim for misrepresentation because:
 - Some of the alleged misrepresentations were in fact true statements or statements of opinion which there was no evidence to demonstrate were not honestly held.
 - The remaining alleged misrepresentations were too vague and lacking in colour and context to be able to draw a positive conclusion that the Supplier had made false statements of specific fact to Mr B.

- The Lender had not participated in a credit relationship with Mr B that was unfair to him because:
 - Regardless of whether the Lender had carried out appropriate checks before lending to Mr B, there was a lack of evidence the loan had been unaffordable for him at the time.
 - While it wasn't possible to determine who the credit broker had been who had arranged the Credit Agreement, due to a lack of evidence, whether the broker had held the relevant regulatory authorisations wasn't relevant in this case. And that was because I couldn't see how this could have led to Mr B incurring a loss, given what he knew about the Credit Agreement.
 - There was only very limited evidence the Supplier had breached Regulation 14(3) of the Timeshare Regulations by marketing the timeshare to Mr B as an investment. Mr B's own testimony didn't suggest the Supplier had done this. But even if it had, Mr B didn't say or suggest in his testimony that the prospect of the timeshare being an investment had figured in his decision-making on the day. Ultimately, I thought there was "very little to go on".0

I invited the parties to the complaint to respond to my provisional decision. The Lender accepted the provisional decision. PR didn't agree with the provisional decision, and asked me to consider various additional points, mostly relating to the alleged sale of the timeshare as an investment, but also relating to the alleged non-disclosure of a commission paid by the Lender to the Supplier for arranging the Credit Agreement. The case has now been returned to me to decide.

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 3.7.3R
- CONC 4.5.3R
- CONC 4.5.2G

The FCA’s Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses (“PRIN”). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

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

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

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

PR’s comments in response to the provisional decision relate only to the issue of whether the credit relationship between Mr B and the Lender was unfair. In particular, PR has provided further comments in relation to the impact of any breach by the Supplier of Regulation 14(3) on Mr B’s purchasing decision at the Time of Sale. It has also now argued for the first time that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship.

As outlined in my provisional decision, 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 its response to my provisional decision. 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 provisional decision. So, I’ll focus here on PR’s points raised in response.

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

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

PR says it hadn't shared the Investigator's assessment on this complaint with Mr B, saying this was done in order not to influence his recollections. PR said Mr B was also unaware about the judgment handed down in *Shawbrook and BPF v FOS*¹. PR said this means his recollections have not been influenced by either the Investigator's assessment or the judgment.

PR also says that, in essence, because Mr B mentioned in his witness statement both holidays and potential gains from selling the Allocated Property, then these must have been motivating factors behind his purchase, noting that when someone invests in property they generally expect it will rise in value. Finally, PR argued that the Supplier was notorious for selling fractional timeshares as investments.

I've thought about PR's further submissions on this point carefully, but they don't change the findings I set out in my provisional decision. I don't think Mr B has alleged, in his own words, that the Fractional Club membership was sold to him as an investment, at any point. When he brought a complaint on his own account before PR's involvement, this wasn't something he mentioned. And more recently, following our Investigator's unfavourable assessment, Mr B only said he was told "...we would be entitled to a fraction with other holders to the sale."

This is a factually accurate description of how the sale of the Allocated Property worked. Mr B doesn't go further than this and say the Supplier gave him an indication or suggestion that the sale of the Allocated Property could or would lead to a financial gain. While I appreciate PR's point about the Supplier having sold fractional timeshares as investments on other occasions, it doesn't mean this happened on *every* occasion it sold a fractional timeshare. And in the absence of any allegation from Mr B in his testimony, that this is what occurred, my conclusion is that it probably didn't on this specific occasion.

As I've concluded the Supplier probably didn't breach Regulation 14(3) of the Timeshare Regulations when selling this timeshare to Mr B, it's not necessary for me to address what Mr B's motivations were when making the purchase. But I will repeat what I said in my provisional decision, which is that no real motivation for the purchase comes across in the very short statement made by Mr B.

So, ultimately, for the above reasons, along with those I already explained in my provisional decision, I remain unpersuaded that there was a breach of Regulation 14(3) by the Supplier, or that Mr B was motivated to purchase the timeshare by the prospect of it being an investment.

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

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').

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').

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’m required to consider under Rule 3.6.4 of the Financial Conduct Authority’s Dispute Resolution Rules (‘DISP’).

But I don’t think *Hopcraft, Johnson and Wrench* assists Mr B in arguing that his credit relationship with the Lender was unfair to him for reasons relating to commission given the facts and circumstances of this complaint.

Based on what I’ve seen, the Supplier’s role as a credit broker wasn’t 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 can’t 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 wasn’t acting as an agent of Mr B but as the supplier of contractual rights he obtained under the Purchase Agreement, the transaction doesn’t strike me as one with features that suggest the Supplier had an obligation of ‘loyalty’ to him when arranging the Credit Agreement and thus a fiduciary duty.

I haven't seen anything 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 B, nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led Mr B into a credit agreement that cost disproportionately more than it otherwise could have.

What's more, in contrast to the facts of Mr Johnson's case, as I understand it, no payment between the Lender and the Supplier, such as a commission, was payable when the Credit Agreement was arranged at the Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not currently persuaded that the commercial 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 Mr B.

My final decision

For the reasons explained above, and in my appended provisional decision, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 January 2026.

A handwritten signature in blue ink, appearing to read 'Will Culley', with a horizontal line underneath.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I'm minded to arrive at the same general set of conclusions as our Investigator, but I've explained some of my reasons in more detail. As a result, I'm issuing this provisional decision to give the parties to the complaint an opportunity to make further submissions before I make my decision final.

The deadline for both parties to provide any further comments or evidence for me to consider is **8 October 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from Mr B, or if they tell me they accept my provisional decision, I may arrange for the complaint to be closed as resolved without a final decision.

The complaint

Mr B complains Shawbrook Bank Limited (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with him under Section 140A of the CCA.

Mr B is represented in his complaint by a professional representative ("PR").

What happened

This complaint relates to a timeshare purchase made by Mr B from a timeshare provider (the "Supplier") on 17 May 2017. It appears Mr B was an existing customer of the Supplier and already had a timeshare with it. The details of this previous timeshare have not been provided by either party and are unknown. I've outlined the known details below:

- The purchase made on 17 May 2017 was of a membership in the Supplier's "Fractional Club". Mr B bought 1,420 points in the Fractional Club, which could be used to book holiday accommodation annually. This type of timeshare was also asset-backed, meaning it included a share in the future sale proceeds of a specific timeshare apartment named on Mr B's purchase paperwork. The purchase cost £23,765. A trade-in value of £14,500 was given for Mr B's existing timeshare, leaving £9,265 for him to pay.
- The Supplier arranged a loan (the "Credit Agreement") with the Lender for the £9,265 balance. This was repayable over 60 months at £182.08 per month.
- Mr B first complained to the Lender on 7 October 2021, by telephone. The Lender's note of the call states Mr B was concerned that because he had signed up for the loan on the same day he'd bought the timeshare, he'd been the victim of mis-selling. He said he'd read about this in the papers. The Lender asked for information from Mr B, and he provided copies of some of his purchase paperwork. It appears this complaint was never responded to by the Lender.
- In November 2022, through PR, Mr B complained again to the Lender, seeking to find it responsible for the Supplier having mis-sold the timeshare and associated loan. The individual mis-selling concerns raised by PR can be found in the table

below, but broadly-speaking they included misrepresentations for which Mr B sought to hold the Lender liable under Section 75 of the CCA, and matters which were alleged to have rendered the credit relationship between him and the Lender unfair under Section 140A of the CCA.

The Lender merged Mr B's two complaints, which it then rejected. The matter was then 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.

Mr B disagreed with the Investigator's assessment and asked for an Ombudsman's decision. At this point PR also forwarded an email from Mr B with his recollections of what had happened when the Supplier sold him the Fractional Club membership.

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've provisionally 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. 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.

I think it's also important at this stage to outline very briefly the general grounds on which Mr B seeks redress from the Lender in relation to what are, at least in part, the *Supplier's* alleged wrongdoings as opposed to the Lender's. The grounds are that Mr B has a claim under Section 75 of the CCA, and Section 140A of the CCA.

Section 75 of the CCA gives a person who has purchased goods or services with certain kinds of credit, a right to claim against their lender in respect of any breach of contract or misrepresentation on the part of the supplier of those goods or services. This is subject to certain technical conditions being met, which I am satisfied have been met in this case.

Section 140A of the CCA operates in a more complex manner. Insofar as is relevant to Mr B's case, it means that the credit relationship between him and the Lender can be found unfair because of anything done (or not done) by, or on behalf of, the Lender.

An unfair credit relationship can also be based on the terms of a related agreement (such as the agreement to buy the timeshare) and, when combined with Section 56 of the CCA, on anything done or not done by the Supplier on the Lender's behalf before the making of the timeshare or loan agreements. The Supplier's acts or omissions during the process of negotiations leading up to the purchase are deemed to be the Lender's responsibility.

In the interests of efficiency and ease of reading, I have set out my findings in a table format. Where a particular finding requires further explanation or analysis, I have indicated this and provided the further explanation below the table.

Table of Summarised Findings

Section 75 - Misrepresentations	Reason why this complaint doesn't succeed
It was falsely represented that the product was an investment that would "considerably appreciate in value".	There's insufficient evidence this was said. If it was said, it would not be untrue to describe the product as an investment as it contained investment features. Any statements regarding future value are likely to have been statements of honest opinion in the absence of evidence to show otherwise.
It was falsely represented that there would be a considerable return on investment because the purchase involved a share in a property that would increase in value.	As per the point above, there is insufficient evidence these representations were made. If they were, there's insufficient evidence they were anything other than statements of honest opinion.
It was falsely represented that the Fractional Club membership could be sold back to the Supplier or easily to third parties at a profit.	There's very little colour or context to this allegation, meaning it's difficult to conclude the Supplier represented this to be the case.
It was falsely represented that Mr B would have access to "the holiday apartment" at any time all year round.	This is a vague allegation which also lacks sufficient detail, context or colour to demonstrate the Supplier made such statements or what was specifically meant by them.
Matters allegedly rendering the credit relationship unfair	Reason why this complaint doesn't succeed
Mr B was pressured into making the purchase.	There is little evidence of what specifically the Supplier said or did which meant Mr B felt he had no choice but to purchase. Mr B also did not use the cooling-off period to cancel the purchase, which I would have expected had he only purchased because he was pressured into doing so.
The Lender failed to carry out the creditworthiness/affordability checks required by industry guidance or regulations.	Mr B has not provided evidence that the loan was actually unaffordable, which would need to be shown if the complaint were to succeed on this point.
The Credit Agreement was arranged by an unauthorised credit broker, meaning it was unenforceable.	There's not enough information available about the identity of the credit broker to determine whether it held the relevant authorisations. However, I don't think it would be reasonable to conclude the credit relationship was unfair, even if the loan was not arranged in the right way. See further details below.

Mr B signed the Credit Agreement and the agreement to purchase the membership at the same time.	I've not been directed to any law or regulation that prohibited the <i>signing</i> of these documents at the same time. Mr B was also not committed to either contract until the cooling-off period had come to an end.
The Supplier marketed and sold the membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations.	While it's possible the Supplier marketed the product in this way, there's limited evidence of this, and it would need to have played a material part in Mr B's purchasing decision to have rendered the credit relationship unfair. See further details below.

The status of the credit broker isn't relevant in this case to the fairness of the credit relationship

While not enough information is available to determine who the credit broker was, and whether they had the required permissions to arrange the Credit Agreement², it looks to me like Mr B knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for him, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see how that led to Mr B experiencing a financial loss – such that I can say that the credit relationship in question was unfair on him as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate him, even if the loan wasn't arranged properly.

Mr B's own recollections don't say or imply that the Supplier sold or marketed the membership as an investment, or that this was a material reason for his purchase

It's apparent from the witness statement forwarded to the Financial Ombudsman Service by PR, that Mr B doesn't recall a great deal about what happened when the Supplier sold the Fractional Club membership. That's not surprising given he was asked to recall these events nearly seven years after they occurred.

Mr B (and his wife) say in their statement that they were told by the Supplier:

"When it got to them selling it [the property named on the purchase agreement] on as they don't hold onto the apartments we would be entitled to a fraction with other holders to the sale."

To me, that is not marketing or selling the product as an investment, it is simply describing how it worked in a neutral way – the named property would be sold at the end of the membership, and Mr and Mrs B would be entitled to a fraction of the sale proceeds. There's no suggestion that this would result in a financial gain for Mr and Mrs B. So I'm not convinced that the Supplier did in fact sell or market the product to them as an investment.

But even if it had, Mr and Mrs B don't say or suggest anywhere in their witness statement that this was something which was important to them or had loomed large in their decision-making process. Indeed, I get very little sense at all from their statement as to their thought

² The information in this case has been very limited – we do not even have a copy of the agreement to purchase the timeshare – meaning the details of the purchase have been pieced together from other documents.

process at that time. In short, there is very little to go on here – certainly not enough to be able to conclude that the Supplier had, firstly, breached the relevant regulations and, secondly, that this had rendered the credit relationship between Mr B and the Lender unfair.

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 Mr B's Section 75 claim, 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 him.

My provisional decision

For the reasons explained above, I'm not minded to uphold Mr B's complaint.

Will Culley
Ombudsman