DRN-6064563

The complaint

Mrs and Mr F'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.

As I will explain below, different considerations exist in relation to these two parts of the CCA and my decision will reflect these differences.

What happened

In February 2017, Mrs and Mr F purchased a 'Fractional Club' membership from a timeshare provider (the 'Supplier'). The membership was asset backed – which meant it included a share of the net sale proceeds of a property named on the purchase agreement (the 'Allocated Property') after the membership term ended. Although both present and involved in the purchase, I note that only Mrs F borrowed the £10,338 from the Lender to buy the membership. The loan was payable over 60 months at £203 per month.

Given both were involved, I will tend to refer mainly to Mrs and Mr F in this decision. They also went on to upgrade to another timeshare membership in 2018, but because different Lenders are involved the two cases have been split. Here, I'm dealing with the 2017 purchase. The 2018 purchase will be the subject of a separate decision.

In January 2024, Mrs and Mr F used a professional representative ('PR') to complain about the purchase and the related loan which Mrs F had taken out. The complaint letter said they were, in summary:

1. Pressured and rushed into signing important contractual documents.
2. Told that they had purchased an investment that would appreciate in value when that was not true.
3. Made to believe that they would have access to a wide range of holidays all around the year when that wasn't true.
4. Given incorrect information about the ongoing maintenance fees.

The Lender rejected the complaint on all grounds. But dissatisfied with the Lender's response, Mrs and Mr F referred their complaint to the Financial Ombudsman Service via their PR. One of our investigators looked into the complaint and issued a 'view' saying they didn't think it was unfair for the Lender to rely on the provisions of the Limitation Act 1980 ('LA') to decline a claim for misrepresentation under Section 75. This was essentially because this part of the complaint had been made late. Accordingly, the investigator didn't recommend upholding the Section 75 part of the complaint.

For the Section 140A element, (the allegations about an unfair credit relationship), the investigator thought our Service *could* consider a complaint under the standard jurisdiction

rules we should apply. However, even with this being the case, they didn't think we should uphold this part of the complaint either, based on the merits put forward.

Finally, the investigator addressed the issue of commission. But because no commission was paid by the Lender to the Supplier in this case, the investigator didn't think this made the credit relationship Mrs F had with the Lender unfair either.

Because Mrs and Mr F's PR didn't agree with the outcome, the complaint was passed to me for an ombudsman's 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.

Having done this, and for the same reasons already explained by our investigator, I am not upholding this complaint. I am sorry to disappoint Mrs and Mr F.

The Section 75 Complaint

When a complaint is referred to the Financial Ombudsman Service on the back of an unsuccessful attempt to advance a Section 75 claim, the act or omission that engages the Service's jurisdiction is different to the considerations under Section 140A. It is the time of the creditor's refusal to accept and pay the debtor's claim which is relevant, rather than anything that occurs before the claim was put to the creditor. As a result, the standard jurisdiction rules which the Financial Ombudsman Service typically works to – the 6 and 3 year time limits (under DISP 2.8.2 (2) R) - don't usually start until the respondent firm answers and refuses the Section 75 claim. What this means is that I can consider Mrs and Mr F's complaint under Section 75.

Section 75(1) of the CCA protects consumers who buy goods and services on credit. A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim the consumer could make against the Supplier. It says, in certain circumstances, that the finance provider is legally answerable for any misrepresentation or breach of contract by the Supplier. Liability under Section 75 isn't based on anything the Lender itself does wrong, but on the misrepresentations and breaches of contract by the Supplier. If the Lender is notified of a valid Section 75 claim, it should pay its liability. If it fails or refuses to do so, that failure or refusal can give rise to a complaint to the Financial Ombudsman Service.

However, as our investigator has already explained, the Lender has a defence to the claim under the LA. It is this issue which I am considering here. The Act essentially sets out that the complainants had six years from which the cause of action accrued, to make the claim. As a general rule, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the LA as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court. So, it is relevant to consider whether Mrs and Mr F's Section 75 claim for misrepresentation was time-barred under the LA before they put it to the Lender.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. 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, like the one in question here, under Section 75 is also 'an action to recover any sum by virtue of any enactment' under Section 9 of the LA. 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 20 February 2017, when Mrs and Mr F entered into the purchase and the time of the alleged misrepresentations of the Supplier – which they say were relied upon. As the loan from the Lender was used to help finance the purchase, this was when they entered into the Credit Agreement that they suffered an alleged loss.

Mrs and Mr F first notified the Lender of this Section 75 claim on 9 January 2024. As more than six years had passed between the Time of Sale and when that claim was first put to the Lender, I don't think it was unfair or unreasonable of the Lender to reject it.

In this case, I haven't seen any other arguments from Mrs and Mr F to persuade me otherwise. Their points of complaint contained within the PR's letter set out alleged serious issues early on in the contract and would have clearly included being unhappy with the Supplier from the outset on a number of fronts. Having looked very carefully at what they have to say, I think the circumstances as they allege would have caused discovery of these matters within a very short time of the membership being taken out.

I am therefore not upholding this aspect of their complaint as I don't think the Lender acted unfairly in rejecting the claim, invoking the LA.

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 of the CCA* in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mrs and Mr F 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. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements;
4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
5. The inherent probabilities of the sale given its circumstances; and when relevant, any existing unfairness from a related credit agreement.

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

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

Mrs and Mr F's complaint about the Lender being party to an unfair credit relationship was made for several reasons as set out by their PR. The PR says, for instance, that the right checks weren't carried out before the Lender lent to Mrs and Mr F.

However, I haven't seen anything to persuade me this was the case in this complaint given its circumstances. Even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mrs and Mr F was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair for this reason. Mrs and Mr F have not expanded at all on why or how the lending was unaffordable and from the information provided, I am not satisfied that the lending was unaffordable for them.

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 wasn't permitted to enforce the Credit Agreement. However, I've seen this allegation made in a large number of complaints brought by this PR and in my view, this is a generic allegation and unlikely to relate to Mrs and Mr F specific case. It looks to me like Mrs and Mr F knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for the Fractional Club membership. As that lending doesn't look like it was unaffordable, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so, I can't see why that led to them suffering a financial loss – such that I can say that the credit relationship in question was unfair as a result.

I note that Mrs and Mr F say that oppressive and rushed sales techniques were a feature of their membership purchase in 2017, and I have considered carefully what they say about this. But while I acknowledge that they may have felt weary after sales processes that went on for a long time, for example, I can't see why this would have caused Mrs and Mr F to think they had *no choice* but to go ahead and buy a timeshare product which they didn't want. I've further noted that they both signed a 'right of withdrawal' form which advised them of their right to cancel the transaction within a 14-day period, and they haven't given any explanation as to why they didn't do this. As I'll also explain more about later, they went on to buy another timeshare from the same Supplier the next year.

Overall, therefore, I don't think that Mrs F's credit relationship with the Lender was rendered unfair 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. And that's the suggestion that membership was marketed and sold as an investment in breach of the 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 Mrs and Mr F'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 this type of 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."

The PR says that the Supplier did exactly this at the Time of Sale – saying, in summary, that Mrs and Mr F were 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 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 because it offered Mrs and Mr F 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 membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn’t prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that membership was marketed or sold to Mrs and Mr F 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 as an investment, i.e. told them or led them to believe that membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

I am familiar with the documentation and processes used by the Supplier during these types of sale. There is competing evidence in this complaint as to whether the 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 as an ‘investment’ or quantifying to prospective purchasers, such as Mrs and Mr F, the financial value of the share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

I also acknowledge that the Supplier’s sales process left open the *possibility* that the sales representative may have positioned membership as an investment. So, I accept that it’s equally possible that Fractional Club membership was marketed and sold to Mrs and Mr F 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. With that being the case, it’s not necessary to make a formal finding on that particular issue for the purposes of this decision.

Was the credit relationship between the Lender and the Consumer rendered unfair?

Having said 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 could have had on the fairness of the credit relationship between Mrs and Mr F and the Lender under the Credit Agreement and related Purchase Agreement as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mrs F and the Lender that was unfair and warranted relief as a result, then whether the Supplier’s breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

In so far as any allegation of investment related marketing carried out by the Supplier during the sale is concerned, the PR said, *"they were told they had purchased an investment which would appreciate in value."* However, there was no further descriptive detail or evidence underpinning these allegations within the Letter of Complaint.

I've seen that we've been sent a statement from Mrs and Mr F themselves, evidently their opportunity to explain in their own words what happened. This statement is both unsigned and undated. More so, I also don't think it supports the PR's points of complaint about investment-related marketing which I've outlined above.

For example, Mrs and Mr F's statement is very brief and includes information about not only a 2017 purchase they made, but it goes on to explain how they bought an 'upgraded' timeshare product in 2018. In their statement, the allegations as set out by their PR, about them buying the 2017 membership because it was marketed to them as an investment, simply aren't replicated. And I find this surprising, given the mention they make about other aspects of the sale(s). After all, the total costs with fees and interest were substantial amounts of money, and I've seen nothing which shows Mrs and Mr F carried out even a basic evaluation of what any such 'investment' might mean or bring to them. I've also seen a great many identical allegations from the same PR put in exactly the same way. So, it seems to me their PR's comments must be viewed as unsupported in this respect.

What Mrs and Mr F do (briefly) explain in their statement is effectively how the Fractional membership worked in that they were buying a small percentage of an Allocated Property. But this doesn't persuade me that making the purchase, based on the product being pitched to them as an *investment*, formed part of their purchasing rationale. As I've said, what we also know about Mrs and Mr F's purchasing history shows they went on to buy a 'Signature Collection' membership. This was after the 2017 sale, but it could reasonably be considered as a meaningful upgrade to the holiday product they already owned in various ways, including the standard of accommodation on offer and better access. In my view, this later purchase was therefore a continuation of their relationship with the Supplier and a likely demonstration of their search, not unreasonably, for enjoyable holidays.

I don't think Mrs and Mr F provide any testimony at all which is persuasive that they purchased the 2017 membership for the purposes of it being an investment. Instead, I think the circumstances and personal testimony, brief as that is, points much more towards their aspirations for holiday enjoyment and diversity, issues that were likely at the heart of their motivations.

Although it may well be the case that Mrs and Mr F now look back at that period with some regret for various reasons, taking everything into account, I don't believe that any breach by the Supplier of Regulation 14(3) – even if there was one - had an impact on their decision to go ahead with this 2017 membership purchase. I think the circumstances overall portray that Mrs and Mr F's expectations at that time were of buying a holiday product for their future family enjoyment. The circumstances just don't describe them buying the membership with an expectation of it being an unspecified investment which would yield a gain or profit, and which for them was realisable in 2032.

Of course, this doesn't mean they were not interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But with all this in mind, I think it's much more likely that Mrs and Mr F would have just pressed ahead with the purchase *whether or not* there had been a breach of Regulation 14(3).

On this basis, I don't think the credit relationship between Mrs F and the Lender was unfair.

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

Mrs and Mr F say they were not given sufficient information at the Time of Sale by the Supplier about some of 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.

In any event, 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 do acknowledge that it is also possible that the Supplier did not give Mrs and Mr F sufficient information, in good time, on the various charges they 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.

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 Mrs and Mr F in practice, nor that any such terms led them to behave in a certain way to their detriment. So, with that being the case, I'm not persuaded that any of the terms governing membership are likely to have led to an unfairness that warrants a remedy.

Commission

The issue of commission has been overhanging these types of complaint for some time due to ongoing legal issues and I'm sorry the parties have had to wait. However, I am now able to move the issue forward.

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'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 Mrs and Mr F in arguing that the credit relationship with the Lender was unfair for reasons relating to commission given the facts and circumstances of this timeshare complaint.

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, nor have I seen anything that persuades me that the commission arrangement gave the Supplier a choice over the interest rate that led them into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's 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've said before, case law makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, the Lender didn't pay the Fractional Club Supplier *any* commission 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 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.

Overall, therefore, I'm not persuaded that any 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 in this case.

Once again, I'm very sorry to disappoint them. But I am not upholding Mrs and Mr F's complaint.

My final decision

I do not uphold this complaint.

I do not require Clydesdale Financial Services Limited trading as Barclays Partner Finance to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 12 March 2026.

Michael Campbell
Ombudsman