

The complaint

Mr C's complaint is, in essence, that Clydesdale Financial Services Limited trading as Barclays Partner Finance (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying claims] under Section 75 of the CCA.

Although the timeshare in question was purchased jointly by Mr and Mrs C, the loan used to make the purchase was in Mr C's name only. As such he is the only eligible complainant here. I will, however, refer to both Mr and Mrs C where it is appropriate for me to do so.

What happened

Mr and Mrs C were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 17 August 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2,110 fractional points, and after trading in their existing points, they ended up paying £4,659 (the 'Purchase Agreement') for their Fractional Club membership.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs C more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr C paid for their Fractional Club membership by taking finance of £19,448 from the Lender (the 'Credit Agreement') in his sole name – this consolidated the outstanding balance of two existing loans they had taken out from different lenders.

Mr C – using a professional representative (the 'PR') – wrote to the Lender on 13 December 2018 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender did not give its final answer to the complaint within the eight weeks required by the regulator, so the complaint was referred to the Financial Ombudsman Service.

As part of its first submission to this Service, the PR sent in a statement from Mr C setting out his recollections of the Time of Sale, along with what he remembered happening when they had bought their previous fractional membership in April 2014. This said:

"In April 2014, we were on holiday in Spain when we were approached to attend an update session. The meeting lasted only for around an hour or so, during which time we were subject to some very high-pressured and very persistent sales tactics. The representatives made it abundantly clear that the current points we had were being phased out and this was the new system taking over. We felt as though we were being kept there against our will, and once we signed everything they put in front of us we said we had to go get our medication just to be able to leave. It was made clear that our

previous points were in perpetuity and that in order to get out of this we would have to upgrade to fractional points. This was to be partial ownership of a complex somewhere and after a certain amount of years the complex would be sold, and we would get our money back. In fact, the representatives said that this was an investment opportunity. As part of this agreement, we would have guaranteed availability for whenever we wanted to go on holiday. This was not the case and we found that we would always have to compromise on some aspect of the holiday when trying to book. We also found that we would have to book several months in advance. Additionally, we were always told that only members were able to book and stay at the resorts. This was a lie. We found that non-members were able to book and stay at the resorts, often for much cheaper than our maintenance fees. The standards of the accommodation were initially really good; however, these have deteriorated over the years and is no longer the standards that we were sold. When it came to finance this agreement, we secured a loan with Barclay's Partner Finance. In fact, this was the only financial provider shown to us and we were told that we had to take out the loan agreement to be able to get the timeshare. We found it strange that we were not given any time alone to read the terms and conditions of the loan agreement, and the fact that all we had to do was sign the documents that were already filled out for us. At no stage did the representatives make us aware of any commission attached to the loan agreement. Had we known this, then we would not have taken out the loan.

As such, on the 16th of April 2014, we had purchased 2,030 fractional points for a total cost of £6,349 which had been paid for through a Barclay's Partner Finance¹ loan.

In August 2015, we were on holiday in Spain when we were approached to attend an update session. When we went along to this meeting we were told that we were experiencing difficulties with booking as a result of lacking the sufficient number of fractional points. As such, if we upgraded that day we would get a special offer on points and we would benefit from greater availability. This was never the case, and in fact, we never seen any difference in the availability of accommodations.

Additionally, we were told that we would have to take out a consolidated Barclay's Partner Finance loan which would bring the previous loan into one single manageable loan. As we had used Barclay's before, we were told that we would have to use them again and as such this was the only financial provider shown to us that day. Similarly, as with the previous agreement, we were not advised about commission or given time to read the terms and conditions of the loan agreement. We only signed all the filled-out documents that were placed in front of us.

Therefore, on the 12th of August 2015 we had purchased an additional 80 fractional points which was paid for through a consolidated Barclay's Partner Finance loan.”

Mr C's complaint was assessed by an Investigator who, having considered the information on file, rejected it on its merits.

Mr C disagreed with the Investigator's assessment and asked for an Ombudsman's decision.

In addition to the representations made by the PR following the Investigator's opinion, Mr and Mrs C submitted a further statement, signed and dated 13 December 2023. This read:

“We purchased a further 2,030 fractional points for a total cost of £6,349 which was bought for the same reasons as the 2014 purchase, this was sold to us as an investment opportunity with the purpose of making a profit on this purchase.”

These additional submissions did not persuade the Investigator that the complaint ought to

¹ This appears to be an error, as the Lender did not provide the finance for this purchase.

be upheld, so as no agreement could be reached, the matter has come to me.

The provisional decision

I considered the matter and issued a provisional decision (the 'PD') setting out my initial thoughts on the merits of Mr C's complaint.

In the PD I said:

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

And having done that, I do not currently think this complaint should be upheld.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

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. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

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

- (1) Told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true.*
- (2) Told by the Supplier that Fractional Club membership was an "investment" when that was not true.*

However, telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. After all, a share in an allocated property was, by its very nature, an investment. And while, as I understand it, the sale of the Allocated Property could be postponed in certain circumstances according to the Fractional Club Rules, Mr and Mrs C say little to nothing to persuade me that they were given a guarantee by the Supplier that the Allocated Property would be sold on a specific date when such a promise would have been impossible to stand by given the inevitable uncertainty of selling property some way into the future. And as there's nothing else on file to support the PR's allegation, I'm not persuaded that there was a representation by the Supplier on the issue in question that constituted a false statement of fact.

So, while I recognise that Mr and Mrs C and the PR have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material

misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

Section 75 of the CCA: the Supplier's Breach of Contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mr and Mrs C say that they could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays for instance. Some of the sales paperwork likely to have been signed by Mr and Mrs C states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday on a number of occasions. Whilst I accept that they may not have been able to take certain holidays, I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr and Mrs C any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

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

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale, or that the contract was breached. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mr and Mrs C and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

- 1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;*
- 2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
- 3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; and*
- 4. The inherent probabilities of the sale given its circumstances.*

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

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

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

The PR says, for instance that:

1. The right checks weren't carried out before the Lender lent to Mr and Mrs C; and
2. Mr and Mrs C were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.

However, as things currently stand, neither of these strike me as a reason why this complaint should succeed.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs C 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 to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr and Mrs C.

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

Overall, therefore, I don't think that Mr C's credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR now says the credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

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

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs C 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 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 Fractional Club membership was marketed or sold to Mr and Mrs C as an investment in breach of Regulation 14(3), I have to be persuaded that it was

more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

And there is competing evidence in this complaint as to whether 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 Mr and Mrs C, 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's equally possible that Fractional Club membership was marketed and sold to Mr and Mrs C as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Was the credit relationship between the Lender and Mr C rendered unfair?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach (if it occurred) had on the fairness of the credit relationship between Mr and Mrs C and the Lender under the Credit Agreement and related Purchase Agreement, as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr C and the Lender that was unfair to them and warranted relief as a result, 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.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mr and Mrs C decided to go ahead with their purchase. Their direct testimony simply does not persuade me that this was the case.

For example, when describing how Fractional Club was sold to them by the Supplier they say:

"...we were told that we were experiencing difficulties with booking as a result of lacking the sufficient number of fractional points. As such, if we upgraded that day we would get a special offer on points and we would benefit from greater availability."

So here Mr and Mrs C say, that by increasing the number of points they held, this particular Fractional Club membership was pitched by the Supplier as a way to mitigate the problems they were experiencing, and they would benefit from greater availability. And their statement

then goes on to discuss how consolidating their outstanding loan into one agreement with the Lender was described as being more manageable. There is simply no mention of them being motivated by the Investment element of Fractional Club and the potential for a profit upon the sale of the Allocated Property. And I find this hard to understand if, as the PR says in the Letter of Complaint (and indeed as Mr and Mrs C now say in their supplementary statement) they were motivated to make the purchase of Fractional Club because it was sold as an investment that could make them a profit.

But I have taken into account what they have subsequently said, and I have considered how they have described the sales process of their previous purchase, and why they bought that one. Although the previous sale doesn't provide any direct evidence of what happened at the Time of Sale, it does provide context as the products bought were very similar, and were likely to have been sold in a similar way.

But again, when I look at what Mr and Mrs C have said about the April 2014 sale, I am not persuaded that their motivation to make the purchase was for the investment element. Although they say the product was described as being an investment:

"This was to be partial ownership of a complex somewhere and after a certain amount of years the complex would be sold, and we would get our money back. In fact, the representatives said that this was an investment opportunity."

I am not persuaded, by what they have said, that this was the reason they made the purchase. There is far greater emphasis given to other reasons – availability, ease of booking, quality and exclusivity, all of which they say have not been as good as they expected.

So, as I've said, I am simply not persuaded that Mr and Mrs C bought the Fractional Club membership because of the potential profit it could bring them. That doesn't mean they weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs C themselves don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs C'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 they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr C and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

Mr C's Commission Complaint

I note that one of Mr C'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 the implications of that judgment become clear, I will finalise my findings on this complaint.

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 claims, and if I put the issue of commission to one side for the time being, I am not persuaded that the Lender was party to a credit relationship with Mr C under the Credit Agreement that was unfair to them 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 them.

But, as I've already said, once the implications of the above judgment become clear, I will finalise my findings on this complaint."

The responses to the provisional decision

The Lender responded to the PD and accepted it, and provided details of the commission that it had paid to the Supplier. The PR, on Mr C's behalf, also responded but said that it had nothing further to add.

Following this, I set out to both sides how I was not persuaded that Mr C's credit relationship with the Lender was unfair to him for reasons relating to the commission arrangements between it and the Supplier.

The PR responded to say it had nothing further to add.

Having received the relevant responses from both sides, I am now finalising my decision.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance

Below are the most relevant provisions and/or guidance as they were at the relevant time:

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

The FCA's Principles

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

- Principle 6

- Principle 7
- Principle 8

What I've decided – and why

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

Following the responses from both sides, I've considered the case afresh. And having done so, and because no new evidence has been submitted or arguments made in response to my initial findings, I see no reason to depart from the outcome as set out in the provisional decision above.

Given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr C's Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate Mr C.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 February 2026.

Chris Riggs
Ombudsman