

The complaint

Ms T'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 claims under Section 75 of the CCA.

What happened

Ms T was an existing member 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 her membership of a timeshare that I'll call the 'Fractional Club' – which she bought on 6 March 2017 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 1,500 fractional points at a cost of £10,999 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Ms T 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 T paid for her Fractional Club membership by taking finance of £19,761 from the Lender (the 'Credit Agreement'). This consolidated the outstanding balance of a previous loan.

Ms T – using a professional representative (the 'PR') – wrote to the Lender on 16 February 2022 (the 'Letter of Complaint') to raise a number of different concerns about what happened at the Time of Sale and the Credit Agreement. 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 acknowledged Ms T's complaint, but did not send a substantive response within the eight weeks required by the regulator, so the PR referred her complaint 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 T disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed 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 Ms T'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 that 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 Ms T was:

- (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, Ms T says little to nothing to persuade me that she was 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 Ms T 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.

Ms T says that she could not holiday where and when she 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.

Ms T's membership was in the type of fractional timeshare called the 'Signature Collection'. One of the advantages of this type of membership when compared to the more 'standard' type of timeshare from the Supplier, was that it afforded the member guaranteed availability on a set week in their Allocated Property if they wished to use it. If not, they could use their points towards accommodation from the Supplier's portfolio of resorts. So, given that Ms T was guaranteed to be able to book her Allocated Property, I find it hard to understand how she says in her statement that "availability is also very poor when trying to book holidays and I can never get what I want."

But, as I've said, she did have the option to book alternative accommodation if she didn't want to use her Allocated Property. 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 Ms T states that the availability of the alternative accommodation was/is subject to demand. So, whilst I accept that she 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.

The PR also says on Ms T's behalf that the Supplier has breached the Purchase Agreement because it went into liquidation. And if certain parts of the Supplier's business was put into administration, I can understand why the PR is alleging that there was a breach of the Purchase Agreement as a result. However, neither Ms T nor the PR have said, suggested or provided evidence to demonstrate that due to the liquidation she is no longer:

- 1. A member of the Fractional Club;*
- 2. Able to use her Fractional Club membership to holiday in the same way she could initially; and*
- 3. Entitled to a share in the net sales proceeds of the Allocated Property when her Fractional Club membership ends.*

So, from the evidence I have seen, I do not think the Lender is liable to pay Ms T 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 there was a breach of contract. 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 Ms T 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;*

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 Ms T and the Lender.

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

Ms T'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 Ms T; and*
- 2. Ms T was 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 was 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 T 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 T.

And as regards the allegation that she was put under undue pressure, I acknowledge that Ms T may have felt weary after a sales process that went on for a long time. But she says nothing 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 T 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 don't think that Ms T'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 now says the credit relationship with the Lender was unfair to her. And that's the suggestion that Fractional Club membership was marketed and sold to Ms T 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 Ms T the prospect of a financial return – whether or not, like all investments, that was more than what she 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 Ms T 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.

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 Ms T, 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.

But 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 Ms T 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 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 (if there was one) had on the fairness of the credit relationship between Ms T 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 T 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.

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 Ms T decided to go ahead with her purchase. I'm simply not persuaded that was the case. I'll explain.

As I've said, Ms T was a long-standing member of a timeshare from the Supplier, having made her first purchase in 2002, and her first 'fractional' purchase, which included an interest in the net sales proceeds of a property, in 2016. So, I think it is a fair assumption to make that she was interested in holidays, and specifically the type of holiday the Supplier provided.

As part of its submissions to this Service, the PR sent a statement from Ms T, setting out her recollections of her entire relationship with the Supplier. Although I am not considering a complaint about the 2016 purchase here, I think what she has said about it provides useful background information. As regards her fractional purchase in 2016 she said:

“In 2016, I was on holiday when I was called into the office to speak with some of the team. Here, they told me that they had too many members and not enough spaces. They advised that the best thing for me to do was to upgrade to the fractional system. This meeting went on for a very long time, and this kind of meeting would happen every time I was on holiday. It would always start with breakfast and then the sales staff would show me around the apartment and/or take me to the sales office. I couldn’t leave the meeting until around 4pm. There was quite a bit of pressure for me to agree. The reps make you feel guilty for saying no, and it’s very uncomfortable. They told me that it was a very good offer, and that the fractions would be worth a lot of money. I was told that I could sell the fractions at a later date, so it seemed like a good idea at the time.

As such, on the 18th of February 2016, I upgraded to 3,640 fractional points at the Sunningdale Village Signature Collection for £17,524. This was paid with a loan from Barclays Partner Finance that the reps had organised for me in the same way as before.”

She then went on to describe her purchase of the Fractional Club at the Time of Sale in 2017:

“My final purchase took place in 2017. I was on holiday again when I was encouraged to buy fractions in another property to increase my portfolio. The sales staff said that I should buy this one for my family to use, they said that I was investing in bricks and mortar, and I could sell it when the time came if I wanted to.

Therefore, on the 6th of March 2017, I purchased a further 1,500 fractional points at the Castillo Del Rey Signature Collection for £10,999. This was also paid with a Barclays Partner Finance loan.”

She then concluded her statement by saying:

“I feel that I was misled with many of the sales and made false promises. I do not believe that the fractions are saleable, and I do not think they hold much value if any. I was pressurised to go ahead with the purchases, and I do not want them. I was told that the fractions would be worth a lot of money, I could either sell them or pass them to my children. I was not made aware that I can only sell my week if the other owners agree. I was also not made aware of the perpetuity of the contract, and I am concerned about leaving this to my children. The availability is also very poor when trying to book holidays and I can never get what I want. It is not how it was described.”

Her description of the Time of Sale and what the sales representative said and did to sell her the Fractional Club membership is very vague, and it lacks any detail to provide colour and context to what she says she was told by the Supplier. She says she was encouraged to make the purchase to increase her “portfolio” and I can see that the purchase met that aim – this was a new, standalone purchase which complimented her existing membership. And she says that the representative told her that her family could use this property.

But I am not persuaded that the potential for a profit was the reason she made the purchase. And as I’ve said, Ms T already held a fractional membership, having bought a bi-annual membership in the Supplier’s ‘Signature Collection’ in 2016. This membership afforded her guaranteed availability in the allocated property connected to that membership. And the Signature Collection properties were also marketed as being more luxurious and better

appointed than any other property the Supplier held in its portfolio.

So Ms T's purchase, at the Time of Sale, was an annual Signature Collection membership, and was bought to supplement her existing bi-annual membership. So, she or her family could, following the second purchase, take a guaranteed holiday every year in one of her allocated properties. Given what I've said about Ms T's purchasing history and her interest in the Supplier's holiday accommodation, I think it is likely, on the balance of probabilities, that she decided to purchase the Fractional Club at the Time of Sale for the holidays it could provide.

I acknowledge that she said she was told "I was investing in bricks and mortar, and I could sell it when the time came if I wanted to", which leads me to think she was interested in a share in the Allocated Property, which after all, wouldn't be surprising given the nature of the product at the centre of this complaint.

But, as Ms T herself doesn't persuade me that her purchase was motivated by her 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 she 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 T'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 T 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 T was not given sufficient information at the Time of Sale by the Supplier in order to make an informed choice.

It isn't clear what information the PR thinks the Supplier failed to provide at the Time of Sale. But 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.

So, while I acknowledge that it is possible that the Supplier did not give Ms T sufficient information, in good time, in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'), even if that was the case, neither Ms T nor the PR have persuaded me that she was deprived of information that would have led her to make a different purchasing decision at the Time of Sale. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why this led to a financial loss for Ms T.

Ms T's Commission Complaint

I note that one of Ms T'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 Ms T 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.

But, as I've already said, once the implications of Johnson, Wrench and Hopcraft 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 arrangement that it had in place with the Supplier at the time. The PR, on Ms T's behalf, did not accept it, but provided no further evidence that it wished me to consider.

Following this, and further to my PD, I set out to both sides how I was not persuaded that Ms T's credit relationship with the Lender was unfair to her 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

The purchase that Ms T made at the Time of Sale was her second fractional timeshare membership, having bought a bi-annual membership in 2016. She purchased this bi-annual membership with a loan from the Lender, and a complaint about that purchase, and the associated loan was made by the PR at the same time as the complaint I am considering here.

The complaint made here is, apart from the details of the sale, virtually identical to the other one. And the evidence submitted to support the complaint, such as the testimony, is the same. So, although there is considerable duplication in the two decisions, I'd like to reassure Ms T that the complaints have been considered on their own merits, whilst taking into account what happened at both sales.

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 Ms T's Section 75 claims, 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 Ms T.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 11 February 2026.

Chris Riggs
Ombudsman