

## The complaint

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

The timeshare in question was bought jointly by Mr and Mrs M, but as the loan used to make the purchase was in Mrs M's sole name, she is the only eligible complainant here. I will, however, refer to both Mr and Mrs M where it is appropriate to do so.

## What happened

Mr and Mrs M were members of a timeshare provider (the 'Supplier') – having purchased a variety of products from it over time. The product at the centre of this complaint is a type of 'fractional' membership sold by the Supplier. The Supplier, over time, sold three different versions of its 'fractional' membership, all of which were known as the Fractional Property Owners Club. These were all asset backed, but with some differences in the way they worked and the way in which they were sold. I will refer to these three products as:

- 'FPOC1'
- 'FPOC2' and
- 'Signature Collection'.

Mr and Mrs M's timeshare membership purchase history up until the Time of Sale being considered here is as follows:

1. February 2011: The trial membership.
2. June 2012: FPOC1 – 1,035 fractional points.
3. October 2012: FPOC1 – 1,888 fractional points.
4. September 2013: FPOC2 – 2,230 fractional points.
5. March 2016: Signature Collection (Bi-annual)<sup>1</sup> – 1,650 fractional points

But the product at the centre of this complaint is their second membership of the Signature Collection, that I'll call the 'Fractional Club' – which they bought on 13 March 2017 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,500 fractional points, and after trading in 810 of their existing points<sup>2</sup>, they ended up paying £9,899 (the 'Purchase Agreement') for their Fractional Club membership.

The Fractional Club, like all of their memberships (with the exception of the trial) was asset backed – which meant it gave Mr and Mrs M more than just holiday rights. It also included a

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<sup>1</sup> This provided Mr and Mrs M a guaranteed week's accommodation in their named property every other year.

<sup>2</sup> Taken from their FPOC2 membership.

share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends. And unlike their existing bi-annual Signature Collection membership, the Fractional Club was an annual membership, so it provided a guaranteed week's accommodation in the Allocated Property every year.

Mrs M paid for their Fractional Club membership by taking finance of £20,431 from the Lender (the 'Credit Agreement') in her sole name. This consolidated the outstanding balance of a previous loan.

Complaints were made to the various lenders that had provided finance for the purchases, but specifically in relation to the Fractional Club, Mrs M – using a professional representative (the 'PR') – wrote to the Lender on 2 February 2023 (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 dealt with Mrs M's concerns as a complaint, but other than acknowledging it, did not send a substantive response within the eight weeks required by the regulator. So, the PR, on 2 May 2023, referred Mrs M's complaint to the Financial Ombudsman Service.

The Lender issued its final response letter to the complaint on 24 April 2024, rejecting it on every ground.

Unhappy with this outcome, Mrs M asked for her complaint to be considered by this Service. So, it was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mrs M 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 Mrs M'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 M were:*

- (1) Told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true; and*
- (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, Mrs M says 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 Mrs M 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 did not accept 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.*

*Mrs M says 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 M 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.*

*The PR also says on Mrs M's behalf that the Supplier breached the Purchase Agreement because it went into liquidation. And if certain parts of the Supplier's business were 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 Mrs M nor the PR have said, suggested*

or provided evidence to demonstrate that, due to the liquidation they are no longer:

- *Members of the Fractional Club;*
- *able to use their Fractional Club membership to holiday in the same way they could initially; and*
- *entitled to a share in the net sales proceeds of the Allocated Property when their Fractional Club membership ends.*

*So, from the evidence I have seen, I do not think the Lender is liable to pay Mrs M 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?*

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*I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. 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 Mrs M 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 Mrs M and the Lender.*

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

*Mrs M'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:*

- *The right checks weren't carried out before the Lender lent to Mrs M; and*
- *Mr and Mrs M 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 Mrs M 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 Mrs M.

And as regards the allegation that they were put under pressure at the Time of Sale, I acknowledge that Mr and Mrs M 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 M 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 Mrs M's credit relationship with the Lender was rendered unfair to her under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR now says the credit relationship with the Lender was unfair to Mrs M. And that's the suggestion that Fractional Club membership was marketed and sold to her and Mr M 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 M the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It 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 M as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to 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 M, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

*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 Mr and Mrs M as an investment in breach of Regulation 14(3).*

*However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it'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 Mrs M and the Lender under the Credit Agreement and related Purchase Agreement, as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.*

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

*But on my reading of the evidence before me, I am not persuaded that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr and Mrs M decided to go ahead with their purchase. I'll explain.*

*As part of Mrs M's submissions to this Service, the PR sent in a statement from Mr and Mrs M, setting out their recollections of all of their timeshare purchases from the Supplier. And as regards what they have said about the Time of Sale and their purchase of the Fractional Club membership, there is little detail in the statement setting out their reasons for the purchase. It reads:*

*"Unfortunately, we were duped into attending another sales presentation which lasted most of the day. The sales pressure was intense and again, they promised that they would solve all of our issues. They stated again that if we increase our investment by purchasing more points, would mean that we would end up making a huge profit on our investment."*

*This sets out what they remember being told by the Supplier. But this doesn't assist me much in understanding their motivations to make the purchase of the Fractional Club at the Time of Sale.*

*But as I've said, Mr and Mrs M have also set out what they remember about their other purchases, and have explained their reasons for making each purchase in their statement. I will set out the sales in date order, with what they have said about their reasons for making each one.*

*[June 2012]*

*"They basically said that we should transfer our trial membership into a full membership because it would be better for us in the long run. They told us this was because fractional*

*points were an investment. They said that we would get back all of our money at the end because they would sell it for us after a number of years (I think it was 15 or 19 years) and we would get back all the money we had put in plus make a profit.”*

*[October 2012]*

*“They told us that basically the amount of fractional points we had wasn’t enough for us to have a decent holiday and that we had to invest in more. They said that the 1,305 points we bought in June 2012 would only give us a one bedroom holiday but if we bought more, we would get a two bedroom holiday. Another major sales push on this was that it would increase our level of investment. They said that if we bought more points, then when they sold the timeshare at the end of the product (in 15 or 19 years time) it would almost double our profit so we would get back what we put in in June and also what we put in in October. It seemed almost like a no brainer to us.”*

*[September 2013]*

*“Again, they put us under such intense sales pressure, telling us that we had to go up to another level. We’d basically been having really serious issues with availability, exclusivity, standard of accommodation and the fact that every single time we went on holiday, they pressured us into buying more points. They told us that if we bought more and we levelled up, they would guarantee that it would solve all of those issues for us and we would basically have not [sic] further issues at all in terms of availability, exclusivity, standard of accommodation or pressure to buy more on every holiday.*

*Again, they told us that if we bought more points, it would increase our investment, and we would make a lot more profit when they sold the timeshare.”*

*[February 2014]*

*“We had been having serious issues with availability, exclusivity, standard of accommodation and the fact that we hadn’t had any return on our investment.*

*They guaranteed us that by buying more points then we would be able to ensure that we would resolve all the issues that we previously had, although we found this quite shocking because that was the exact same promise that was made to us in September 2013 and it had made absolutely no difference whatsoever. Another reason they told us we should buy this was because it would increase our investment with Club La Costa and would mean that we would end up making a huge profit on our investment.”*

*[March 2016]*

*“At this point, we were so disillusioned by all the promises that had been made to us that we really just needed them to help us get everything sorted. We’d paid out so much money over the years and we just really needed them to help us.*

*They basically said that if we upgraded our timeshare to the next level, then this would resolve all of the issues that we’d been experiencing. They guaranteed this to us and we truly believed them when they said that if we bought new points, then we would move up to the next level and it would sort out all of our issues with availability, exclusivity, standard of accommodation and also they guaranteed us that buying more fractions would increase our investment by a huge amount.”*

*Having considered everything that Mr and Mrs M have said here, I think it is likely that they made their first fractional purchase, in June 2012 for the potential profit they could make from the eventual sale of the Allocated Property. They were moving from a trial membership,*

*and they have only talked about the investment potential of the membership when describing why they bought it. And this also seems likely when they made their October 2012 purchase.*

*But, when I consider the remaining purchases from September 2013 onwards, it seems to me that each purchase was motivated by a desire to solve the problems they were experiencing with availability, exclusivity and accommodation standards with their existing membership. In September 2013 they talk of "having really serious issues with availability, exclusivity, standard of accommodation" and that if "we bought more and we levelled up, they would guarantee that it would solve all of those issues for us and we would basically have not [sic] further issues at all in terms of availability, exclusivity, standard of accommodation or pressure to buy more on every holiday."*

*This makes me think that the September 2013 purchase was not made for the investment element, but was to try and solve the problems they were experiencing.*

*And this follows into their next purchase, in February 2014:*

*"We had been having serious issues with availability, exclusivity, standard of accommodation and the fact that we hadn't had any return on our investment.*

*They guaranteed us that by buying more points then we would be able to ensure that we would resolve all the issues that we previously had..."*

*I acknowledge that they have talked about "making a huge profit on our investment" but this seems secondary to their desire to solve their existing problems. So I think they would have made this purchase anyway.*

*And my thoughts on this are strengthened further when I look at what they have said about their March 2016 purchase:*

*"At this point, we were so disillusioned by all the promises that had been made to us that we really just needed them to help us get everything sorted. We'd paid out so much money over the years and we just really needed them to help us.*

*They basically said that if we upgraded our timeshare to the next level, then this would resolve all of the issues that we'd been experiencing. They guaranteed this to us and we truly believed them when they said that if we bought new points, then we would move up to the next level and it would sort out all of our issues with availability, exclusivity, standard of accommodation and also they guaranteed us that buying more fractions would increase our investment by a huge amount."*

*Again, I acknowledge that they have ended this by talking about the purchase increasing their investment, but this again seems secondary to me, and it appears that they were so intent on solving the problems they were experiencing, they would have made the purchase anyway. And this purchase was their first Signature Collection purchase, which meant it was different to their previous memberships in that it gave them guaranteed availability in their named property on a set week every other year.*

*So, all of the above gives me more understanding of what Mr and Mrs M meant when they said, of their purchase of the Fractional Club, that by purchasing more points:*

*"...they promised that they would solve all of our issues."*

*Those issues were clearly poor availability, exclusivity and standards of the accommodation.*

*And it is important to also note that the Fractional Club, being an upgrade from their FPOC2*

membership (which did not offer guaranteed availability) was also an annual Signature Collection membership – so they would be able to use the two allocated properties (from this one and their other Signature Collection membership) to have guaranteed availability at least once a year, every year, for holidays.

So, when taking everything they have said into account, along with their holiday usage and purchasing history, I am not persuaded they bought the Fractional Club for the potential profit it could give them on the sale of the Allocated Property. I think they probably bought it for the holidays it could give 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 M 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. I think they would have bought it anyway.

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 M's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests 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 Mrs M and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

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

The PR says that Mr and Mrs M were 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 Mr and Mrs M 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 Mrs M nor the PR have persuaded me that they were deprived of information that would have led them 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 they led to a financial loss for Mrs M.

#### Mrs M's Commission Complaint

I note that one of Mrs M's other concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. The Supreme Court's recent judgment *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('Johnson, Wrench and Hopcraft') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer-credit brokers. So, once the implications of that judgment become clear, I will finalise my findings on this complaint.

## Conclusion

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*In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim(s), 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 Mrs M under the Credit Agreement that was unfair to her for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate Mrs M.*

*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 it paid to the Supplier for arranging the Credit Agreement. The PR, on Mrs M's behalf, also responded but did not accept it, and provided some further arguments that it wished to be considered.

Following these submissions, and further to my PD, I set out to both sides how I was not persuaded that Mrs M'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 in relation to the commission arrangements, but maintained that the complaint ought to be upheld for the other reasons it set out following the PD.

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, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it. Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the PD only relate to the issue of whether the credit relationship between Mrs M and the Lender was unfair. In particular, the PR has provided further argument in relation to whether the membership was sold to Mr and Mrs M as an investment at the Time of Sale, and that it was the investment element of the membership that motivated them to make the purchase.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But they didn't make any further comments in relation to those in their response to my PD. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on the PR's points raised in response.

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

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The PR has said that Mr and Mrs M's description of what happened at the Time of Sale describes a direct breach of Regulation 14(3) by the Supplier. But as I explained in my PD, I found there was a possibility that the Supplier breached Regulation 14(3) at the Time of Sale. But I went on to explain that whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint, so I didn't think it necessary to make a formal finding on that particular issue for the purposes of the decision. And that was because I didn't think that the credit relationship between Mrs M and the Lender would have been rendered unfair to her *even if* the Supplier had breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, because I thought they would most likely have made the purchase anyway. And having considered what the PR has said, I still don't think any unfairness was caused to the credit relationship for this reason.

The PR has reiterated that the judgment handed down in *Shawbrook & BPF v FOS*<sup>3</sup>

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<sup>3</sup> *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)

asserted that the relevant question in this circumstance is whether the breach of Regulation 14(3) was a material factor in the decision to purchase, not whether it was the only factor or principal one. It feels that the testimony Mrs M has provided demonstrates that this was the case. But, as I explained in my provisional decision, I'm not persuaded from the testimony that Mrs M has adequately demonstrated that the promise of profit was a motivating factor in their decision to move ahead with the purchase – principal or otherwise. And I remain unpersuaded that this was the case having considered the PR's submissions following my PD. The testimony provided, when taken with their circumstances at the time, makes me think it is likely, on the balance of probabilities, that Mr and Mrs M would have made their purchase of the Fractional Club membership at the Time of Sale whether or not there had been a breach of Regulation 14(3) because of the additional holidays it would provide.

The PR has also stated that I've been inconsistent in my approach compared to previous decisions issued by both me and other Ombudsmen, and has provided examples it feels demonstrates this. But my decision is based on consideration of Mrs M's specific circumstances and the complaint made. Each complaint turns on its own facts; an Ombudsman's decision on how one timeshare sale occurred does not determine his, or any other Ombudsman's decisions about the facts of other sales at different times and of different products.

Ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr and Mrs M's purchasing decision.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr and Mrs M's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the associated credit relationship between Mrs M and the Lender was unfair to her for this reason.

## **Conclusion**

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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 Mrs M'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 Mrs M.

## **My final decision**

For all of the reasons set out above, I do not uphold this complaint.

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

Chris Riggs  
**Ombudsman**

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