DRN-6088940

## 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 a claim under Section 75 of the CCA.

## What happened

Mr C was the 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 his membership of a timeshare that I'll call the 'Signature Collection – which he bought on 8 August 2015 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 1,420 fractional points at a cost (after trading an existing timeshare) of £9,256.

Signature Collection membership was asset backed – which meant it gave Mr 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 his membership term ends.

Mr C paid for his Signature Collection membership by taking finance of £34,890 from the Lender (the 'Credit Agreement'). £25,634 of this was used to repay an existing loan Mr C had with other lender's taken to finance previous timeshare purchases.

Mr C – using a professional representative (the 'PR') – wrote to the Lender on 15 February 2024 (the 'Letter of Complaint') to raise a number of different concerns. Since then the PR has raised some further matters it says are relevant to the outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender did not issue a final response letter and the complaint was then referred to the Financial Ombudsman Service. I issued a provisional decision in October 2025 setting out why I didn't plan to uphold Mr C's complaint. I said:

*"I have considered all the available evidence and arguments to decide what is 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*

*As a general rule, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 (the 'LA') as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court. So, it is relevant to consider whether Mr C's Section 75 claim for misrepresentation was time-barred under the LA before he put it to the Lender.*

*As I mentioned above, a claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim Mr C could make against the Supplier.*

*A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued (see Section 2 of the LA).*

*But a claim, like the one in question here, under Section 75 is also 'an action to recover any sum by virtue of any enactment' under Section 9 of the LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.*

*The date on which the cause of action accrued was the Time of Sale. I say this because Mr C entered into the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which he said were relied upon. And as the loan from the Lender was used to help finance the purchase, it was when he entered into the Credit Agreement that he suffered a loss.*

*Mr C first notified the Lender of his Section 75 claim on 15 February 2024. And as more than six years had passed between the Time of Sale and when that claim was first put to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mr C's concerns about the Supplier's alleged misrepresentations.*

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

*There 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.*

*The investigator considered Mr C's complaint about an unfair relationship had been brought too late under our rules. I do not agree. Although Mr C's loan with the lender was repaid in 2016, it was consolidated by a further loan from the Lender. So, as per Section 140C[1] of the CCA, it is a related agreement for the purposes of the assessment of fairness of Mr C's relationship with the Lender under Section 140A of the CCA. In other words when assessing the fairness of Mr C's relationship with the Lender, a court would also look at any related agreement as part that assessment, which in this case would include the loan that is the subject of this complaint.*

*The event complained about for the purposes of DISP 2.8.2 R (2)(a) is the allegation that the Lender was party to an unfair credit relationship with Mr C and, during the currency of that*

[1] Section 140C of the CCA sets out at (4) that References in sections 140A and 140B to an agreement related to a credit agreement (the 'main agreement') are references to a credit agreement consolidated by the main agreement;

*relationship, it perpetuated the unfairness, failing in its responsibilities to take the necessary steps to correct the situation. As far as I am aware, the further loan that consolidated this one is still running. Given a court would assess this loan for fairness alongside that later loan as a related agreement, and given the later loan has not been repaid, the event Mr C complains about was still taking place at the time he brought his complaint. He has not therefore brought his complaint about an unfair relationship arising from his agreement with the Lender too late under rules.*

*Having considered the entirety of the credit relationship between Mr 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;*
4. *The inherent probabilities of the sale given its circumstances; and*
5. *Any existing unfairness from a related credit agreement.*

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

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

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

*They include, allegations that:*

1. *Mr C was pressured by the Supplier into purchasing Signature Collection membership at the Time of Sale.*
2. *the right checks weren't carried out before the Lender lent to Mr C.*
3. *the loan interest was excessive.*
4. *The Credit Agreement was arranged by a broker acting outside of its authorisation.*

*However, as things currently stand, none of these strike me as reasons why this complaint should succeed.*

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

*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 C was actually unaffordable before also concluding that he lost out as a result and then consider whether the credit relationship with the Lender was unfair to him for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for the Mr C.*

*Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker and that the fact that the loan was used to refinance an earlier one wasn't set out in the Credit Agreement, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr C knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from, that he was refinancing an earlier loan and that he was borrowing money to pay for Signature Collection membership. And as the lending doesn't look like it was unaffordable for him, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so or didn't contain all the information it needed to (which I make no formal finding on), I can't see why that led to Mr C suffering a financial loss – such that I can say that the credit relationship in question was unfair on him as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate him, even if the loan wasn't arranged properly.*

*Further, I don't think the rate of interest was excessive, compared either to other rates available from other point-of-sale lenders or on the open market, so I can't say it would be fair or reasonable to tell the Lender to do anything because of this.*

*Overall, therefore, I don't think that Mr C's credit relationship with the Lender was rendered unfair to him 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 him. And that's the suggestion that Signature Collection membership was marketed and sold to him 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***

*The Lender does not dispute, and I am satisfied, that Mr C's Signature Collection membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.*

*Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Signature Collection membership as an investment. This is what the provision said at the Time of Sale:*

*"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."*

*But the PR and Mr C say that the Supplier did exactly that at the Time of Sale – saying, in summary, that they were told by the Supplier that Signature Collection membership was the type of investment that would only increase in value.*

*The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.*

*A share in the Allocated Property clearly constituted an investment as it offered Mr 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 Signature*

*Collection 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 Signature Collection. They just regulated how such products were marketed and sold.*

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

*There is competing evidence in this complaint as to whether Signature Collection 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 Signature Collection as an 'investment' or quantifying to prospective purchasers, such as Mr 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 Signature Collection membership as an investment. So, I accept that it's equally possible that Signature Collection membership was marketed and sold to Mr 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 had on the fairness of the credit relationship between Mr 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 him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him 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 Signature Collection membership was not an important and motivating factor when Mr C decided to go ahead with his purchase.*

*Having considered his testimony and the contents of the Letter of Complaint I've not found it to be persuasive of this in this particular case. Mr C has made an almost identical and very brief statement in relation to several sales across several years and the testimony is not specific to this particular sale and lacking in specific detail. He hasn't said what the supplier said or did at the Time of Sale that made him think he could expect a profit or financial gain or why this was material to his decision to purchase Signature Collection membership on this occasion.*

*From what I have seen of the Supplier's marketing material, Signature Collection membership offered the preferential right to use an Allocated Property that was of a higher standard than its more standard offerings along with other additional benefits, as well as the choice to convert this right to points annually. And Mr C went on to upgrade several of his other existing timeshares to Signature Collection membership after taking holidays under the membership. So, I think Mr C was attracted to the additional benefits that Signature Collection membership offered him and this was likely a strong motivation for his purchase.*

*That doesn't mean Mr C wasn'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 C himself doesn't persuade me that his purchase was motivated by his 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 he ultimately made.*

*On balance, therefore, even if the Supplier had marketed or sold the Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr C's decision to purchase Signature Collection 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 he would have pressed ahead with his 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 him even if the Supplier had breached Regulation 14(3).*

***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 claim and I am not persuaded that the Lender was party to a credit relationship with Mr C under the Credit Agreement that was unfair to him 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 him."*

Mr C did not agree with my provisional decision and the PR provided further comments and evidence it wished for me to consider.

The Lender accepted my provisional decision and said it had nothing to add.

I am therefore finalising my decision on the complaint.

**The legal and regulatory context**

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

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that

being the case, it is not necessary to set it out 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 parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

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

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

The PR's further comments in response to the provisional decision in the main relate to the issue of whether the credit relationship between Mr C and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr C as an investment at the Time of Sale and the pattern of sales.

As outlined in my provisional decision, 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 provisional decision. 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 provisional decision. So, I'll focus here on the PR's points raised in response.

The PR has provided further comments and evidence, (including comments on the Supplier's training material), which in my view relate to whether Signature Collection membership was marketed as an investment in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. However, as I explained in my provisional decision, while the Supplier's sales processes left open the possibility that the sales representative may have

positioned Signature Collection membership as an investment, it isn't necessary to make a finding on this as it is not determinative of the outcome of the complaint. I explained that Regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

The PR's comments and evidence in this respect do not persuade me that I should uphold Mr C's complaint because they do not make me think it's any more likely that the Supplier's breach of Regulation 14(3) led Mr C to enter into the Purchase Agreement and the Credit Agreement. And that is a key consideration as to whether any potential breach of the Timeshare Regulations by the Supplier led to a credit relationship between Mr C and the lender that was unfair on him.

The PR has provided its further thoughts as to Mr C's likely motivations for purchasing Signature Collection membership. I recognise it has interpreted Mr C's testimony differently to how I have and thinks it points to him having been motivated by the prospect of a financial gain from Fractional Club membership.

In my provisional decision I explained the reasons why I didn't think Mr C's purchase was motivated by the prospect of a financial gain (i.e., a profit). And although I have carefully considered the PR's arguments in response to this, I'm not persuaded the conclusion I reached on this point was unfair or unreasonable.

The PR said Mr C's testimony shows he was led to believe he would recoup everything he had paid to the Supplier in all his previous purchases as well as the capital and interest on the credit agreement and all of this amounted to a hope or expectation of a profit or financial gain. However, the total of those sums is a significant sum of money, likely over £100,000 once annual management fees are accounted for. Mr C's testimony does not provide any detail as to how the Supplier explained his share in the sale proceeds from the Allocated Property could generate such a considerable return. And the available evidence does not persuade me this was something the Supplier was likely to have told Mr C in this particular case.

From looking at Mr C's purchase history I can see he traded in part of his significant holding of existing Fractional Club membership points each time he purchased additional Signature Collection memberships, including this one. And from looking at his reservation usage, he made regular use of holiday weeks, taking around 30 holidays. I think it's most likely that Mr C, having been attracted to the features and benefits and benefits of Signature Collection membership, upgraded his Fractional Club membership for reasons other than the prospect of a profit or financial gain.

So, ultimately, for the above reasons, along with those I already explained in my provisional decision, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr C's purchasing decision. And for that reason, I do not think the credit relationship between Mr C and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

**S140A conclusion**

Given all of the factors I've looked at in this part of my decision, including the relevant relationships, arrangements and payments between Mr C, the Lender and the Supplier and having taken all of them into account, I'm not persuaded that the credit relationship between Mr C and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

## Other points

The PR said the pattern of selling from the Supplier, where a new product was purchased by Mr C in consecutive years between 2014 and 2018, shows persistent pressure selling. I explained in my provisional decision that Mr C's testimony did not persuade me that he made his purchase because his ability to exercise that choice was significantly impaired by pressure from the Supplier. And nothing I've seen since my provisional decision makes me think I should depart from that finding.

## Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably by not meeting 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 him.

## My final decision

For the reasons I have explained above, I do not uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 17 February 2026.

Michael Ball
**Ombudsman**