DRN-6089241

The complaint

Mr G's complaint is, in essence, that Clydesdale Financial Services (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.

Background to the complaint

Mr G purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 10 February 2015 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 900 fractional points at a cost of £14,348 (the 'Purchase Agreement').

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

Mr G paid for his Fractional Club membership by taking finance of £14,348 from the Lender (the 'Credit Agreement'). His partner was also present at the Time of Sale and is named on the Fractional Club agreement, but as Mr G is the sole eligible complainant, I will refer to him throughout.

Mr G – using a professional representative (the 'PR') – wrote to the Lender on 13 June 2018 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving him a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
3. The decision to lend being irresponsible because the Lender did not carry out the right creditworthiness assessment.

(1) <u>Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale</u>

Mr G says that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. told him that he was buying an interest in a specific piece of "real property" when that was not true.
2. told him that Fractional Club membership was an "investment" when that was not true.
3. told him that the Supplier's holiday resorts were exclusive to its members when that was not true.
4. told him that the Fractional Club membership had a guaranteed end date after 15 years when this was not true.

Mr G says that he has a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, he has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr G.

(2) Section 140A of the CCA: the Lender's participation in an unfair credit relationship

The Letter of Complaint set out several reasons why Mr G says that the credit relationship between him and the Lender was unfair to him under Section 140A of the CCA. In summary, they include the following:

1. Fractional Club membership was marketed and sold to him as an investment in breach of regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').
2. The contractual terms setting out (i) the duration of his Fractional Club membership and/or (ii) the obligation to pay annual management charges for the duration of his membership were unfair contract terms under the Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR').
3. He was pressured into purchasing Fractional Club membership by the Supplier.
4. The money lent to him under the Credit Agreement was unaffordable for him.
5. The Lender paid some commission to the Supplier and did not disclose this to Mr G.

The Lender did not respond to the merits of the complaint.

Mr G then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

The Lender disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I considered the matter and issued a provisional decision (the 'PD') dated 12 September 2025. In that decision, 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.

But 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.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

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.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mr G could make against 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 does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mr G at the Time of Sale, the Lender is also liable.

This part of the complaint was made for several reasons that I set out at the start of this decision. They include the suggestion that Fractional Club membership had been misrepresented by the Supplier because Mr G was told he was buying an interest in a specific piece of "real property" when that was not true. However, telling prospective members that they were buying a fraction or share of one of the Supplier's properties was not untrue. Mr G's share in the Allocated Property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give them that interest, it did not change the fact that he acquired such an interest.

Further, if the Supplier described the Fractional Club membership as an "investment", as alleged by the PR, this would not be untrue as the membership contained an investment element, that being the share in an Allocated Property. I will go into this point further below.

As for the rest of the Supplier's alleged pre-contractual misrepresentations, while I recognise that Mr G has concerns about the way in which his Fractional Club membership was sold, he has not persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for the other reasons he alleges. And I say that because, on balance, I find it unlikely the Supplier told him that the resorts were only available to members of the Fractional Club as he was staying at one of its properties at the Time of Sale as a non-member, so I think he would have been aware that non-members could stay at the resorts. And I am not persuaded that the Supplier said the membership was guaranteed to end after 15 years as the written contract is clear in saying it would continue to run for 19 years, or until the Allocated Property was sold. I don't think saying that there was a guaranteed end date to Fractional Club membership, when liabilities would cease, would be consistent with the written information provided at the Time of Sale and I have not seen anything to suggest the Supplier would have made different representations to Mr G orally.

What's more, as there's nothing else on file that persuades there were any false statements of existing fact made to Mr G by the Supplier at the Time of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reasons he alleges.

For these reasons, therefore, I do not think the Lender is liable to pay Mr G any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

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

I have already explained why I am not persuaded that the contract entered into by Mr G was misrepresented (or breached) by the Supplier in a way that makes for a successful claim under Section 75 of the CCA and outcome in this complaint. But Mr G also says that the credit relationship between him and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales

process at the Time of Sale that he has concerns about. It is those concerns that I explore here.

As Section 140A of the CCA is relevant law, I do have to consider it. So, in determining what is fair and reasonable in all the circumstances of the case, I will consider whether the credit relationship between the Mr G and the Lender was unfair.

Under Section 140A of the CCA, a debtor-creditor relationship can be found to have been or be unfair to the debtor because of one or more of the following: the terms of the credit agreement itself; how the creditor exercised or enforced its rights under the agreement; and any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement) (s.140A(1) CCA). Such a finding may also be based on the terms of any related agreement (which here, includes the Purchase Agreement) and, when combined with Section 56 of the CCA, on anything done or not done by the supplier on the creditor's behalf before the making of the credit agreement or any related agreement.

Section 56 plays an important role in the CCA because it defines the terms "antecedent negotiations" and "negotiator". As a result, it provides a foundation for a number of provisions that follow it. But it also creates a statutory agency in particular circumstances. And while Section 56(1) sets out three of them, the most relevant to this complaint are negotiations conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement.

A debtor-creditor-supplier agreement is defined by Section 12(b) of the CCA as "a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier […]". And Section 11(1)(b) of the CCA says that a restricted-use credit agreement is a regulated credit agreement used to "finance a transaction between the debtor and a person (the 'supplier') other than the creditor […] and "restricted-use credit" shall be construed accordingly."

The Lender doesn't dispute that there was a pre-existing arrangement between it and the Supplier. So, the negotiations conducted by the Supplier during the sale of Mr G's membership of the Fractional Club were conducted in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement as defined by Section 12(b). That made them antecedent negotiations under Section 56(1)(c) – which, in turn, meant that they were conducted by the Supplier as an agent for the Lender as per Section 56(2). And such antecedent negotiations were "any other thing done (or not done) by, or on behalf of, the creditor" under s.140(1)(c) CCA.

Antecedent negotiations under Section 56 cover both the acts and omissions of the Supplier, as Lord Sumption made clear in Plevin, at paragraph 31:

"[Section] 56 provides that [when] antecedent negotiations for a debtor-creditor-supplier agreement are conducted by a credit-broker or the supplier, the negotiations are "deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity". The result is that the debtor's statutory rights of withdrawal from prospective agreements, cancellation and rescission may arise on account of the conduct of the negotiator whether or not he was the creditor's agent.' […] Sections 56 and 140A(3) provide for a deemed agency, even in a case where there is no actual one. […] These provisions are there because without them the creditor's responsibility would be engaged only by its own acts or omissions or those of its agents."

And this was recognised by Mrs Justice Collins Rice in Shawbrook & BPF v FOS at paragraph 135:

"By virtue of the deemed agency provision of s.56, therefore, acts or omissions 'by or on behalf of' the bank within s.140A(1)(c) may include acts or omissions of the timeshare company in 'antecedent negotiations' with the consumer".

In the case of Scotland & Reast, the Court of Appeal said, at paragraph 56, that the effect of Section 56(2) of the CCA meant that "negotiations are deemed to have been conducted by the negotiator as agent for the creditor, and that is so irrespective of what the position would have been at common law" before going on to say the following in paragraph 74:

"[...] there is nothing in the wording of s.56(2) to suggest any legislative intent to limit its application so as to exclude s.140A. Moreover, the words in s.140A(1)(c) "any other thing done (or not done) by, or on behalf of, the creditor" are entirely apposite to include antecedent negotiations falling within the scope of s.56(1)(c) and which are deemed by s.56(2) to have been conducted by the supplier as agent of the creditor. Indeed the purpose of s.56(2) is to render the creditor responsible for such statements made by the negotiator and so it seems to me wholly consistent with the scheme of the Act that, where appropriate, they should be taken into account in assessing whether the relationship between the creditor and the debtor is unfair."[1]

So, the Supplier is deemed to be Lender's statutory agent for the purpose of the pre-contractual negotiations.

However, an assessment of unfairness under Section 140A isn't limited to what happened immediately before or at the time a credit agreement and related agreement were entered into. The High Court held in Patel (which was recently approved by the Supreme Court in the case of Smith), that determining whether or not the relationship complained of was unfair had to be made "having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination" – which was the date of the trial in the case of an existing credit relationship or otherwise the date the credit relationship ended.

The breadth of the unfair relationship test under Section 140A, therefore, is stark. But it isn't a right afforded to a debtor simply because of a breach of a legal or equitable duty. As the Supreme Court said in Plevin (at paragraph 17):

"Section 140A […] does not impose any obligation and is not concerned with the question whether the creditor or anyone else is in breach of a duty. It is concerned with […] whether the creditor's relationship with the debtor was unfair."

Instead, it was said by the Supreme Court in Plevin that the protection afforded to debtors by Section 140A is the consequence of all of the relevant facts.

I have considered the entirety of the credit relationship between Mr G and the Lender along with all of the circumstances of the complaint and I do not 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 Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale; and*

[1] The Court of Appeal's decision in *Scotland* was recently followed in *Smith*.

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 Mr G and the Lender.

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

Mr G's complaint about the Lender being party to an unfair credit relationship was also made for several reasons, all of which I set out at the start of this decision.

The PR says that the right checks weren't carried out before the Lender lent to Mr G. The Investigator received some information from Mr G to give more context to his financial situation at the Time of Sale, prior to issuing her findings on the case. I requested more information from Mr G, as I thought there were some unanswered questions about his financial situation at that time. Having carefully considered the bank statements and other information provided by Mr G, I don't think the Lender carried out reasonable and proportionate checks at the Time of Sale. But I must also be satisfied that with proportionate checks, the Lender would have found that Mr G could not have sustainably repaid the loan, before concluding whether the credit relationship with the Lender was unfair to him for this reason.

In reaching my findings, I have considered the available information about Mr G's income and expenditure, as well as the future costs of the loan repayments and timeshare maintenance fees. I have also thought about the "travel savings bonus" of £120 per month paid to him by the Supplier for 10 months. Mr G says this was paid to him to assist with the loan repayments until he was able to arrange a loan with a lower interest rate upon returning to the UK.

From the information Mr G has provided, I think at the time the Lender agreed to lend, it was more likely than not that he could afford to repay the loan sustainably. And he could still do so after the "travel savings bonus" payments came to an end. Mr G and his PR may provide me any further information in response to my provisional decision – for example, information about any attempt to secure borrowing with a better interest rate.

Mr G says that he was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale. I acknowledge that he may have felt weary after a sales process that went on for a long time. But he says 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 Fractional Club membership when he simply did not want to. He also declined to make a purchase in an earlier meeting in London, and in a subsequent sales meeting while on holiday, so I think he was aware he did not have to agree to proceed with the sale. He was also given a 14-day cooling off period and, although I appreciate he says he wasn't made aware of his right to cancel, I can see he and Mrs G signed the document titled "SEPARATE STANDARD WITHDRAWAL FORM TO FACILITATE THE RIGHT OF WITHDRAWAL", providing him with the information on how to cancel the agreement. And with all of that being the case, I'm not persuaded that Mr G made the decision to purchase Fractional Club membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

I'm not persuaded, therefore, that Mr G'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 he says his credit relationship with the Lender was unfair to him. And that's the suggestion that Fractional Club membership was marketed and sold to him as an investment in breach of prohibition against selling timeshares in that way.

Was Fractional Club membership marketed and sold at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations?

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

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling membership of the Fractional Club 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 says that the Supplier did exactly that at the Time of Sale. So, that is what I have considered next.

The term "investment" is not defined in the Timeshare Regulations. In Shawbrook & BPF v FOS, the parties agreed that, 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" at [56]. I will use the same definition.

Mr G's share in the Allocated Property clearly, in my view, constituted an investment as it offered him the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But 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 G 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 Fractional Club membership offered him the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

There is evidence in this complaint 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 G, the financial value of his share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr G as an investment. For example, the fifth statement on the document titled "Member's Declaration" reads:

“We understand that the purchase of our Fraction is for the primary purpose of holidays and is not specifically for direct purposes of a trade in and that [the Supplier] makes no representation as to the future price or value of the Fraction”.

And within the document titled “Fractional Property Owners Club Information Statement”, it says:

“The purchase of Fractional Rights is for the primary purpose of holidays and is neither specifically for direct purposes of a trade in nor as an investment in real estate. [The Supplier] makes no representation as to the future price or value of the Allocated Property or any Fractional rights”.

With that said, the paperwork provided by the Supplier at the Time of Sale also includes the following disclaimer, which to me might suggest the Fractional Club membership ought to be considered by a potential customer as an investment opportunity:

"The Vendor, any sales or marketing agent and the Manager and their related businesses (a) are not licensed investment advisors authorized by the Financial Services Authority to provide investment or financial advice; (b) all information has been obtained solely from their own experiences as investors and is provided as general information only and as such it is not intended for use as a source of investment advice and (c) all purchasers are advised to obtain competent advice from legal, accounting and investment advisors to determine their own specific investment needs; (d) no warranty is given as to any future values or returns in respect of an Allocated Property.”

With that said, I acknowledge that the Supplier’s training material left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. And I accept that it’s possible that Fractional Club membership was marketed and sold to him as an investment in breach of Regulation 14(3) given the difficulty the Supplier was likely to have had in presenting a share in the net sales proceeds of the Allocated Property as an important feature of Fractional Club membership without breaching the relevant prohibition.

However, I don’t think it’s necessary to make a finding on this point because, as I’ll go on to explain, I’m not currently persuaded that would make a difference to Mr G’s complaint anyway.

<u>Was the credit relationship between the Lender and Mr G rendered unfair?</u>

As the Supreme Court’s judgment in Plevin makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

I am also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in Carney and Kerrigan (respectively) on causation.

In Carney, HHJ Waksman QC said the following in paragraph 51:

“[…] In cases of wrong advice and misrepresentation, it would be odd if any relief could be considered if they did not have at least some material impact on the debtor when deciding whether or not to enter the agreement. […] in a case like the one before me, if in fact the debtors would have entered into the agreement in any event, this must surely count against a finding of unfair relationship under s140A. […]”

And in Kerrigan, HHJ Worster said this in paragraphs 213 and 214:

"[…] The terms of section 140A(1) CCA do not impose a requirement of "causation" in the sense that the debtor must show that a breach caused a loss for an award of substantial damages to be made. The focus is on the unfairness of the relationship, and the court's approach to the granting of relief is informed by that, rather than by a demonstration that a particular act caused a particular loss. Section 140A(1) provides only that the court ***may*** *make an order* ***if*** *it determines that the relationship is unfair to the debtor. […]*

[…] There is a link between (i) the failings of the creditor which lead to the unfairness in the relationship, (ii) the unfairness itself, and (iii) the relief. It is not to be analysed in the sort of linear terms which arise when considering causation proper. The court is to have regard to all the relevant circumstances when determining whether the relationship is unfair, and the same sort of approach applies when considering what relief is required to remedy that unfairness. […]"

So, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr G and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) which, having taken place during its antecedent negotiations with Mr G, is covered by Section 56 of the CCA, falls within the notion of "any other thing done (or not done) by, or on behalf of, the creditor" for the purposes of 140(1)(c) of the CCA and deemed to be something done by the Lender) led him to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

But I'm not currently persuaded it did. I'll explain why.

The PR says:

"[Mr G] would have no other reason to purchase a product if this was not said to be an investment, or at least a property asset. Our clients wished to invest in the product as well as taking 4-5 star holidays with their family."

Here, I think the PR has identified that there was at least one other reason for Mr G to have agreed to purchase the Fractional Club membership – that being to use it to take family holidays. So, I have considered the document setting out Mr G's recollection of the events that took place at the Time of Sale, which is signed and dated 21 June 2017 and is ten pages long. About the sale, he says:

"Throughout the day in question, we were constantly told that we could own a piece of the luxurious apartments that we were shown and that holidays would be so much cheaper, we would never have to fully pay for a holiday again".

And:

"They repeated what they said in our meeting in London - exclusive resorts, not timeshare, and interest in land and that we would be acquiring an asset which could be sold in the future."

So, I think it is likely that the share in the Allocated Property was discussed during the sale as Mr G has referred to this in his recollections. But there is no suggestion in Mr G's recollections of the sales process at the Time of Sale that the Supplier led him to believe that the Fractional Club membership was an investment from which he would make a financial gain nor was there any indication that he was induced into the purchase on that basis. So, I need to consider what else he says he was told about the membership. He says:

"They asked us how much money we spent on holidays a year, which I recall I came up with the number of £1800 per annum. We did not have a lot of money to spend on holidays as my wife is from Columbia and our summer holiday priority is to save up to travel back to see her family whenever we possibly can".

And:

[The Supplier's] offer was of course attractive, we had seen all their best apartments in the best locations, and there was no question that the resorts were of a fantastic standard. It occurred to me afterwards that we had been very vulnerable to being swayed by our emotions in that situation, and taken advantage of by the very aggressive sales techniques that [the Supplier] impose[d].

So, having thought about what he said took place at the Time of Sale, I think Mr G was interested in the holiday rights the Fractional Club membership provided to him. His recollections suggest the Supplier emphasised the quality of the resorts and his family's future holiday plans when selling the membership to him. Most importantly, he has not said the Supplier told him the membership was an investment, or that he could expect to make a profit from the sale of the Allocated Property. So, I don't think the potential to make a profit from the sale of the Allocated Property was something that was particularly important to his decision to enter the membership.

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 G'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 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 G and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

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

It is clear from the submissions of everyone involved in this complaint that there was a lot of information passed between the Supplier and Mr G when he purchased membership of the Fractional Club at the Time of Sale. But he and the PR say that the Supplier failed to provide him with all of the information he needed to make an informed decision.

The PR also says that the contractual terms governing the ongoing costs of Fractional Club membership and the consequences of not meeting those costs were unfair contract terms under the UTCCR. It has listed the specific terms it says give rise to an unfair relationship between Mr G and the Lender in a supporting document. I have considered these terms, but I don't think it is necessary to list them all here.

In its letter of complaint, the PR specifically refers to what it calls a "foreclosure provision". In its supporting document, it refers to clause 5.5 of the Fractional Club Rules, which it says:

"[A]llows [the Supplier] to cancel owners' fractional rights if they default on payment of management fees and thereafter the fractional rights should be held by [the Supplier] to use or dispose of at its discretion, including transferring such rights to itself".

One of the main aims of the Timeshare Regulations and the UTCCR was to enable consumers to understand the financial implications of their purchase so that they were/are put in the position to make an informed decision. And if a supplier's disclosure and/or the terms of a contract did not recognise and reflect that aim, and the consumer ultimately lost

out or almost certainly stands to lose out from having entered into a contract whose financial implications they didn't fully understand at the time of contracting, that may lead to the Timeshare Regulations and the UTCCR being breached, and, potentially the credit agreement being found to be unfair under Section 140A of the CCA.

However, as I've said before, the Supreme Court made it clear in Plevin that it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A of the CCA. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I have considered the paperwork referred to by the PR and can see the document is dated July 2014, which predates Mr G's sale. So, I cannot be sure these were the rules in place at the Time of Sale. The "Terms and Conditions" document says:

"Failure to pay Management Charges when due as set out in the Rules will lead to suspension of rights and may end up with the sale and eventual loss altogether of the Fractional Rights without compensation to the Owner".

In any case, I need to consider what consequences, in terms of harm or prejudice, might have flowed from the Supplier's operation of such a term. In Link Financial v Wilson [2014] EWHC 252 (Ch), the judge attached importance to the question of how an unfair term had been operated in practice. In Mr G's case, he says in his testimony that he no longer wished to use his membership and had instructed his solicitor to terminate the same.

So, given the facts and circumstances of this complaint, I am not persuaded that the Supplier's alleged breaches of the UTCCR are likely to have prejudiced Mr G's purchasing decision at the Time of Sale and rendered his credit relationship with the Lender unfair to him for the purposes of section 140A of the CCA. And I say this because Mr G has surrendered his membership, so I don't think it can be said that the Supplier cancelled his fractional rights as a result of his non-payment of the maintenance fees. I have also considered the other terms the PR says are unfair and have not seen any evidence to show that any of these terms were operated against Mr G unfairly.

Moreover, as I haven't seen anything else to suggest that there are any other reasons why the credit relationship between the Lender and Mr G was unfair to him because of an information failing by the Supplier, I'm not persuaded it was."

In conclusion, given the facts and circumstances of this complaint, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mr G's Section 75 claim.

At the time of my PD, I deferred my conclusions on the matter of commission disclosure in order to review that issue further. I've since written to the parties setting out my thoughts on why I wasn't persuaded to uphold this aspect of the complaint.

Applying the principles and factors set out in the Supreme Court judgment[2] handed down on 1 August 2025, I found nothing to suggest to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr G. Nor did I see anything that persuaded me that the commission arrangements between them gave the Supplier a choice over the interest rate which led Mr G into a credit agreement that cost disproportionately more than it otherwise could have.

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[2] *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ("*Hopcraft, Johnson and Wrench*")

Further, the flat rate and amount of commission paid was such that it gave me no reason to think that any failure to disclose it to Mr G had a material impact on his decision to enter into the Credit Agreement. At £860.88, it was only 6% of the amount borrowed and even less than that (5.4%) as a proportion of the charge for credit. That didn't strike me as disproportionate; nor were the surrounding circumstances otherwise capable of rendering unfair the credit relationship between the Lender and Mr G such that the Lender needed to take any action in redress.

I didn't find any of the other arguments put forward demonstrated that the credit agreement between Mr G and the Lender was unfair to him under section 140A of the CCA. Absent any other reason why it would be fair or reasonable to direct the Lender to compensate Mr G, I said I didn't propose to uphold the complaint.

The Lender accepted the PD.

The PR also responded on Mr G's behalf – it did not accept the PD and provided some further comments it wishes to be considered.

Having received the relevant responses from both parties, I'm 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:

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

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]

<u>The FCA's Principles</u>

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.

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

The PR has raised various points in response to my findings on this aspect of Mr G's complaint. In summary, it says:

- I erred by concluding that holidays were what motivated Mr G when he decided to purchase the Fractional Club membership.
- I failed to properly consider the Lender's decision to lend Mr G the money and that I concluded incorrectly that *"there is no evidence of irresponsible lending".*
- The broker was not properly authorised to broker the loan, and this means it is unenforceable and entitles Mr G to recover monies paid to the Lender.
- I have not properly considered the fairness of the commission arrangements between the Lender and the Supplier.

I will respond to each of these points in turn.

Was Fractional Club membership marketed and sold at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations?

The PR has reiterated that the judgment handed down in *Shawbrook & BPF v FOS* 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. But, as I explained in my provisional decision, I'm not persuaded from Mr G's testimony that he has adequately demonstrated that the promise of potentially making a profit was a motivating factor to his decision to move ahead with the purchase – principal or otherwise.

I accept that within the PR's new submissions, Mr G has provided further evidence, where he now says the prospect of making a profit was the deciding factor in his decision to purchase the Fractional Club membership. But I am conscious that there is a real risk that his testimony has been coloured by the outcome in *Shawbrook & BPF v FOS* and what has been said in the PD. And, on balance, the timing in which this evidence has been provided makes me conclude that I can place little weight on it, particularly as it contains assertions which weren't present in his original statement.

The Lender's decision to lend Mr G the money

The PR says I failed to properly consider the responsibility of the lending decision and that I stated that there was no evidence of irresponsible lending.

I will remind the PR of what I said in my PD about the unfair relationship test:

"The breadth of the unfair relationship test under Section 140A, therefore, is stark. But it isn't a right afforded to a debtor simply because of a breach of a legal or equitable duty. As the Supreme Court said in Plevin (at paragraph 17):

"Section 140A […] does not impose any obligation and is not concerned with the question whether the creditor or anyone else is in breach of a duty. It is concerned with […] whether the creditor's relationship with the debtor was unfair."

With this in mind, I will repeat what I said in the PD:

"Having carefully considered the bank statements and other information provided by Mr G, I don't think the Lender carried out reasonable and proportionate checks at the Time of Sale. But I must also be satisfied that with proportionate checks, the Lender would have found that Mr G could not have sustainably repaid the loan, before concluding whether the credit relationship with the Lender was unfair to him for this reason."

So, I did not find that there was no evidence of irresponsible lending – instead, I thought the Lender had not carried out the checks it ought to have done. But this does not automatically cause the relationship between the Lender and Mr G to be unfair – he would need to provide factual information to support the allegation that the lending was actually unaffordable.

I will also remind the PR that one of our investigators requested detailed information from Mr G about his financial circumstances leading into the Time of Sale, in order to investigate this matter. She then provided the following thoughts to both parties on 6 March 2023:

"Given what I've seen I don't think [the Lender's] checks at the time of lending were reasonable or proportionate. However, having reviewed [Mr G's] financial circumstances in the lead up to the lending decision, I don't think the lending was unaffordable or unsustainable for [Mr G]. I say this because I've seen [Mr G] was averaging an income of around £3205 per month and his total core expenditure was around £1981. When taking into consideration the new repayments for the loan given for the timeshare of £250.86, [Mr G] would still have been left with around £970 disposable income."

The PR did not dispute the investigator's analysis.

After Mr G's complaint was passed to me for a decision, I asked the PR for Mr G to provide me with more information about his monthly expenditure as I felt this was needed to better understand his financial situation leading up to the Time of Sale. I received some information in response. I considered it and found that it showed, on the balance of probabilities, that Mr G could afford the monthly loan repayments, given his circumstances. I am aware that Mr G's business ceased trading in the years following the Time of Sale and that he stopped repaying the loan after October 2018. But the PR has not provided me with any material new evidence to persuade me that the Lender should not have agreed to lend him the money, given the information it had (and ought to have had) available to it at the Time of Sale. So, I see no reason to depart from the findings I reached in the PD.

The brokering of the loan

The PR says the broker that arranged Mr G's loan was not properly authorised to carry this out and this renders the loan unenforceable. It says *"with confidence"* that an entity it calls *"CRDL"* was the intermediary that arranged the loan, and that it is not regulated by the FCA to broker consumer credit loans, which in turn, means that the loan is rendered unenforceable and that Mr G is entitled to recover monies paid. The PR then says that, if not CRDL, the broker was another entity I'll call *'PTS'*, which was also not authorised by the FCA. And the PR says that the only company that was regulated by the FCA is now in liquidation.

I will point out that the PR did not raise this specific matter until very late in the complaint process. And it has not given me any evidence to support its assertion that either *'CRDL'* or *'PTS'* were the broker that arranged Mr G's loan. Indeed, the Credit Agreement names a different entity as the credit intermediary. I am unsure why the PR thinks it is relevant that the company that appears on the FCA register is in liquidation, as that was not the case at the Time of Sale.

In any case, it looks to me like Mr G knew, amongst other things, how much money he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for his Fractional Club 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 (which I make no formal finding on), I can't see why that led to Mr G 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 Mr G, even in the event that his loan wasn't arranged properly.

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

The PR has asked for the documents the lender has provided to show the commission arrangements. While I appreciate the PR would like to have full disclosure of all of the documents and information the Lender has provided, our rules do not require me to provide this when dealing with a complaint. As the PR will be aware, under DISP 3.5.9R I may, where I consider it appropriate, accept information in confidence (so that only an edited version, summary or description is disclosed to the other party). I'm satisfied that agreements between the Lender and the Supplier are commercially sensitive and that the summary information on commission arrangements we've already shared with the PR is appropriate in this case.

As I've noted, the PR has disagreed with my provisional conclusions on whether the Lender should pay redress because of an unfair credit relationship arising in connection with commission arrangements between the Lender and the Supplier. The PR says, in summary, that when the overall circumstances of those arrangements are considered in the round, the credit relationship was plainly unfair. In support of this position the PR has expressed, among other things, that:

- The PD doesn't properly apply the Supreme Court's judgment in *Hopcraft, Johnson and Wrench,* which concluded a range of factors informed whether a credit relationship between a consumer and a lender was unfair
- Failure to disclose payment of commission – irrespective of the size of any payment - was a regulatory breach that goes to the heart of fairness
- I have reversed the burden of proof by treating the absence of evidence as neutral or favourable to the Lender.

I have thought carefully about what the PR has said on behalf of Mr G. But I don't find that it offers persuasive grounds for me to reach a different conclusion on this issue.

I've previously set out my thoughts on any impact the Supreme Court's conclusions in *Hopcraft, Johnson and Wrench* has on Mr G's arguments that his credit relationship with the Lender was unfair to him for reasons relating to commission given the facts and circumstances of this complaint.

The PR's response doesn't offer anything that leads me to think that, for the most part, any of the factors it has referenced were in fact at play in Mr G's case. It hasn't, for example, provided evidence to show the existence of commercial or contractual ties that were concealed from Mr G, any persuasive reasons to conclude that the Supplier's role was that of advisor to Mr G, or to show that any other conflict of interest arose from the roles the Supplier did perform.

For such a claim to be successful would require more than the bare assertions that have been made in this case. I'm not persuaded that it is sufficient, as the PR seems to contend, simply to suggest unsubstantiated allegations of fact and require that the Lender disprove them else the credit relationship be deemed unfair. This issue was considered in the judgment in *Promontoria (Henrico) Ltd v. Gurcharn Samra* [2019] EWHC 2327 (Ch) ("*Samra*"), where HHJ David Cooke held (at para.26):

> *"…the onus is on the claimant[3] to show, to the normal civil standard, that the relationship is not unfair because of any of the reasons set out in s 140A(1)(a)-(c). Whether it is so unfair is a matter for the court's overall judgment having regard to all the relevant circumstances and matters, including matters relating (i.e. personal) to the creditor and debtor. This onus on the claimant does not however mean, in my judgement…that where Mr Samra[4] makes allegations of fact on which he relies he does not have the burden of proving them to the normal civil standard. The onus placed on the creditor is as to the relationship between it and the debtor, and does not have the effect that factual allegations made by Mr Samra must be accepted unless they can be positively disproved by contrary evidence."*[5]

I'm satisfied the Lender has provided sufficient information in response to my enquiries to enable me to reach a conclusion about its commission arrangements with the Supplier. I've seen nothing in this case that leads me to think what the Lender has said about the commission arrangements is inaccurate. So there's no reason for me to reach a different finding over those commission arrangements.

In its correspondence the PR has emphasised the regulatory breaches connected with a failure to disclose commission arrangements. I have already set out why in my view this doesn't automatically lead to an unfair credit relationship for which the Lender needs to offer redress. While I've considered all that the PR has submitted, I remain of that view.

Section 140A: Conclusion

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[3] In this case the creditor answering a claim of an unfair credit relationship arising out of an overdraft facility.
[4] In this case the borrower making an allegation that there was an unfair credit relationship.
[5] I note that in *Wilson v Clydesdale Financial Services Ltd t/a Barclays Partner Finance* [2021] (Unreported), the court also took the view that the burden is on the debtor to prove on the balance of probabilities *the facts* that purportedly create the unfairness. It is then that the lender's burden of proof that requires it to prove *the relationship* was not unfair kicks in. While I do not suggest this offers legal precedent, the subject matter of that case was a fractional timeshare sale and given the similarities I have taken the same approach when considering the facts in this case.

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I do not think that the credit relationship between Mr G and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him such that it warrants the Lender offering any redress.

Commission: The Alternative Grounds of Complaint

In my previous correspondence I mentioned that some of the grounds for complaint about the fairness or otherwise of the credit relationship could also constitute separate and freestanding complaints. I'll reiterate my findings here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr G (that is, secretly). The second relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

For the reasons I set out previously, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr G a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to him. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint. For the reasons I have also previously set out, I think Mr G would still have taken out the loan to fund his purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Conclusion

After careful reconsideration of the facts and circumstances of this complaint, I adopt my provisional conclusions as part of my final decision. For the reasons I've given above and in my earlier correspondence I've mentioned, I don't think the Lender acted unfairly or unreasonably when it dealt with Mr G's section 75 claim. And I'm not persuaded that the Lender was party to a credit relationship with Mr G that was unfair to him for the purposes of section 140A of the CCA. Having taken everything into account, I see no other reason why it would be fair or reasonable for me to direct the Lender to compensate him.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 February 2026.

Andrew Anderson
Ombudsman