

The complaint

Mr R'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 and Mrs R were members of a timeshare provider (the 'Supplier') – having previously purchased a product from it. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Signature Collection' – which they bought on 10 April 2015 (the 'Time of Sale'). After trading in their existing membership, they paid £28,413 for 2,090 fractional points (the 'Purchase Agreement').

Signature Collection membership was asset backed – which meant it gave Mr and Mrs R 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 the end of their membership term. However, the Signature Collection differed from other timeshares offered by the Supplier, including the one Mr and Mrs R previously held, in that members had preferential rights to stay in their allocated property, and the properties were said to be more luxurious.

Mr and Mrs R paid for their Signature Collection membership by taking finance of £28,413 from the Lender in Mr R's name (the 'Credit Agreement'). As the finance used for the purchase was in Mr R's sole name, only he is eligible to bring this complaint. Hereafter, I will only refer to Mr R unless it's important to differentiate between him and Mrs R.

In January 2018, Mr R wrote to the Lender to raise a number of concerns about the sale of the Signature Collection membership. The Lender issued its final response to Mr R's complaint in February 2018, rejecting it on every ground.

In March 2018, Mr R stopped making his monthly loan repayments.

In June 2018, Mr R referred his complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits. Mr R did not agree with the Investigator's assessment.

In July 2022, while the complaint was waiting to be assessed again after Mr R disagreed with the initial findings, he engaged a professional representative (the 'PR') to act on his behalf. The PR provided this service with a letter setting out its concerns with the Signature Collection sale (the 'Letter of Claim'). As both sides are familiar with the PR's concerns, it isn't necessary to repeat them in detail here beyond the summary above. The PR also provided a statement from Mrs R (the 'Client Statement') dated 24 March 2017, which set out her recollections from the Time of Sale.

The complaint was then reviewed by another Investigator who considered that it should be

upheld in view of the contents of the Client Statement. The Lender did not agree 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 19 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.

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 Claim that Signature Collection membership had been misrepresented by the Supplier at the Time of Sale because Mr R was:

1. Told that he had purchased an investment that would "considerably appreciate in value".
2. Promised a considerable return on his investment because he was told that he would own a share in a property that would considerably increase in value.
3. Told that he could sell his Signature Collection membership to the Supplier or easily to third parties at a profit.
4. Made to believe that he would have access to "the holiday apartment" at any time all year round.

However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). 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. And even if the Supplier's sales representative(s) went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than an honestly held opinion as there isn't any accompanying evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

As for points 3 and 4, while it's *possible* that Signature Collection membership was misrepresented at the Time of Sale for one or both of those reasons, I don't think it's

probable. They've given little to none of the colour or context necessary to demonstrate that the Supplier made false statements of existing fact and/or opinion. And as there isn't any other evidence on file to support the suggestion that Signature Collection membership was misrepresented for these reasons, I don't think it was.

So, while I recognise that Mr R – and the PR – have concerns about the way in which Signature Collection membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

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

I've already explained why I'm not persuaded that Signature Collection 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 Mr R and the Lender along with all 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, when relevant
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 R and the Lender.

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

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

Before he was represented by the PR, Mr R argued on several occasions that the Lender acted irresponsibly when it agreed to lend the amount needed to purchase Signature Collection membership to him. For instance, he said:

- The Lender did not carry out any affordability checks.
- He was 67 at the time of taking out the loan, which had a 15-year term, and no consideration was given as to whether he would be able to afford the

- repayments in retirement.
- His income was largely from dividends which weren't guaranteed.

I have carefully considered Mr R's comments. The Lender has provided evidence of the affordability checks it carried out before agreeing to lend, which took into account his age and included reviewing information from external Credit Reference Agencies. And it's confirmed that Mr R's application passed its lending criteria following these checks.

Although dividend income is not guaranteed, I am not persuaded that the Lender shouldn't have taken this into account when making its lending decision. Mr R was a company director at the Time of Sale, and dividends are often taken as remuneration in such roles due to their different tax treatment. Bonus and overtime payments are also frequently taken into account in credit applications despite not being guaranteed, provided these have been paid consistently for a period of time prior to the credit application. So, the same would be reasonable for dividends that had an expectation of being regularly paid.

Taking all these factors into consideration, while I am sorry to hear that Mr R has struggled to meet his monthly repayments, I am not satisfied that the lending for the Signature Collection purchase was irresponsible. If Mr R maintains that the lending was irresponsible, I invite him to provide his bank statements and payslips from the six months prior to his credit application, along with any other evidence he thinks is relevant, in response to this provisional decision, so I can consider this further.

Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, 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 R knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from 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 (which I make no formal finding on), I can't see why that led to Mr R experiencing 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.

The PR also says that there were one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Mr R in practice, nor that any such terms led him to behave in a certain way to his detriment, I'm not persuaded that any of the terms governing Signature Collection membership are likely to have led to an unfairness that warrants a remedy.

I acknowledge that Mr R 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 Signature Collection membership when he simply did not want to. He was also given a 14-day cooling off period and 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 R made the decision to purchase Signature Collection membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

Mr R has also said he was given alcohol during the sales presentation – and seems

to be implying that this impacted his decision to purchase. I note the Supplier says it does not provide alcohol during its sales presentations, but I have seen this allegation on other, similar complaints, so I do think it's possible the Supplier's rules on alcohol were, on occasion, broken. That said, Mr R did not agree to proceed with his Signature Collection purchase until several days after his sales presentation. Therefore, I think it's unlikely that if any alcohol was offered during the sales process, this or pressure from the Supplier's representative(s) during the sales presentation influenced his ultimate decision to purchase.

Overall, therefore, I don't think that Mr R'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 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 the 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 R'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 says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mr R was 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 R the prospect of a financial return – whether or not, like all investments, that was more than what he 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 R 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's 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 R, the financial value of their share in the net sales proceeds of their allocated property along with the investment considerations, risks and rewards attached to it.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative(s) may have positioned Signature Collection membership as an investment. So, I accept that it's also possible that Signature Collection membership was marketed and sold to Mr R 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 R 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 R 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 R 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 Mr R decided to go ahead with his purchase.

The Lender has provided the Supplier's sales notes from around the Time of Sale, which say:

“[Mr and Mrs R] love their holidays. mr on the verge of retiring so wil [sic] enjoy even more. [Signature] collection will give them the flexibility to use their [apartment] or points.”

The sales notes also show that Mr R was dissatisfied with the Signature Collection unit he was originally offered as he said it was not as advertised in the Signature

Collection brochure. But in the end Mr R agreed to purchase as he was offered a much larger unit that met his needs.

So, the sales notes suggest that Mr R's motivation to purchase the 'upgrade' to Signature Collection was the ability to stay in the Allocated Property and the enhanced accommodation standards offered under Signature Collection membership.

Further, in response to the first Investigator assessment, which considered whether the Supplier misrepresented Signature Collection membership as an investment, Mr R said the following:

“[...] I fail to understand why you would have the impression that I might have bought the timeshare in the belief that it could be regarded as an investment? That never at any stage entered my thinking.”

This clearly shows that an investment with the hope for a return was not a determining factor for Mr R.

I have considered the Client Statement the PR provided, written by Mrs R, which says they were told that at the end of the membership term the profit from the sale of the Allocated Property would be distributed among the owners and that their membership would increase in value. But ultimately, I am more persuaded by the testimony that has come directly from Mr R that the investment element was not the motivation for his purchase.

Having considered all the evidence in the round, I am not persuaded that Mr R's purchase was motivated by the possibility of a profit. The evidence instead points to a holiday-based motivation.

That doesn't mean that Mr R 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 R 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 Mr R 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 R'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 R and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

The Supplier's alleged breach of Spanish Law and its implications on the Credit Agreement

The PR argues that, because the Purchase Agreement was unlawful under Spanish law in light of certain information failings by the Supplier, I should treat that Agreement and the Credit Agreement as rescinded by Mr R and award him compensation accordingly – in keeping with the judgment of the UK's Supreme Court

in *Durkin v DSG Retail* [2014] UKSC 21 (*'Durkin'*).

However, as the Lender hasn't been party to any court proceedings in Spain, it seems to me that there is an argument for saying that the Purchase Agreement is valid under English law for the purposes of *Durkin*.

I also note that the Purchase Agreement is governed by English law. So, it isn't at all clear that Spanish law would be held relevant if the validity of the Purchase Agreement were litigated between its parties and the Lender in an English court. For example, in *Diamond Resorts Europe and Others* (Case C-632/21), the European Court of Justice ruled that, because the claimant lived in England and the timeshare contract was governed by English law, it was English law that applied, not Spanish, even though the latter was more favourable to the claimant in ways that resemble the matters seemingly relied upon by the PR.

Overall, therefore, in the absence of a successful English court ruling on a timeshare case paid for using a point-of-sale loan on similar facts to this complaint, and given the facts and circumstances of this complaint, I'm not persuaded that it would be fair or reasonable to uphold it for this reason.

Mr R's commission complaint

I note that one of Mr R'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.”

In conclusion, as things stood at the time, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mr R's Section 75 claim, and I was 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 – nor did I see any other reason why it would be fair or reasonable to direct the Lender to compensate him. However, it was necessary to consider the implications of *Johnson, Wrench and Hopcraft* before finalising my thoughts on the merits of his complaint.

The PR responded that it did not accept the PD and provided some further comments and evidence to be considered. The Lender did not respond.

After considering the implications of the Supreme Court's judgment, I set out my thoughts on these to both parties on 5 January 2026. I said:

“In my provisional decision, I explained that I would be considering the implications of a recent Supreme Court judgment before finalising my thoughts on the merits of Mr R's complaint.

I am now in a position to provide my thoughts on Mr R's concerns related to the alleged payment of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. I am outlining my thoughts on the matter in this letter so that both parties have the opportunity to respond before I finalise 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 3.6.4 R 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.

In my provisional decision, I explained that 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 was not necessary to set out that context in detail. But, following my provisional decision, I would add that the following regulatory rules/guidance are also relevant:

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

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

- CONC 3.7.3 R
- CONC 4.5.3 R
- CONC 4.5.2 G

The FCA's Principles

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

- Principle 6
- Principle 7
- Principle 8

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

The PR says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('*Hopcraft, Johnson and Wrench*').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A

“disinterested duty”, as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson’s case it was 55%. This was “so high” and “a powerful indication that the relationship [...] was unfair” (see paragraph 327);
2. The failure to disclose the commission; and
3. The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. The size of the commission as a proportion of the charge for credit;
2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);
3. The characteristics of the consumer;
4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and
5. Compliance with the regulatory rules.

From my reading of the Supreme Court’s judgment in *Hopcraft, Johnson and Wrench*, it sets out principles which apply to credit brokers other than car dealer credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I’m required to consider under Rule 3.6.4 of the FCA’s Dispute Resolution rules (‘DISP’).

But I don’t think *Hopcraft, Johnson and Wrench* assists Mr R in arguing that his credit relationship with the Lender was unfair to him for reasons relating to commission given the facts and circumstances of this complaint.

I haven’t seen anything 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 R, nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led him into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it’s possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But as I’ve said before, 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. And with that being the case, it isn’t

necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it's for the reasons set out below that I don't currently think any such failure is itself a reason to find the credit relationship in question unfair to Mr R.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mr R entered into wasn't high. At £710.33, it was only 2.5% of the amount borrowed and even less than that (2.3%) as a proportion of the charge for credit. So, had Mr R known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr R wanted the Signature Collection membership and had no obvious means of his own to pay for it. And at such a low level, the impact of commission on the cost of the credit he needed for a timeshare he wanted doesn't strike me as disproportionate. So, I think he would still have taken out the loan to fund his purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr R but as the supplier of contractual rights he obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to him when arranging the Credit Agreement and thus a fiduciary duty.

Overall, therefore, I'm not currently persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr R.

So, given all the factors I've looked at both here and in my provisional decision, and having taken all of them into account, I'm still not persuaded that the credit relationship between Mr R and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

Commission: the alternative grounds of complaint

While I've provisionally found that Mr R's credit relationship with the Lender wasn't unfair to him for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Mr R's complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis 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 R (i.e. secretly). And 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.

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr R 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 because, for the reasons I also set out above, I think Mr R 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."

The Lender acknowledged the correspondence, but the PR did not respond. I am now in a position to finalise my decision.

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.

I've considered the case afresh in light of the responses from the parties. Having done so, I've reached the same findings as that which I outlined in my PD and further correspondence regarding the commission arrangements, 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 Mr R and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr R as an investment at the Time of Sale.

As outlined in my PD, the PR originally raised various other points of complaint, which I addressed as far as was possible at that time. But it hasn't made any further comments in relation to those in its response to my PD, nor has it responded to my correspondence about the commission arrangements at the Time of Sale. Indeed, it hasn't said it disagrees with any of my findings about those other points. And since I haven't been provided with anything more in respect of those points by either party, I see no reason to change my conclusions about them. So, I'll focus here on the PR's points raised in response to my PD that I haven't yet addressed.

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

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

In my PD, I explained why, having reviewed all the available evidence, I was not persuaded that the investment element of Signature Collection membership was the motivation for Mr R's purchase. I have carefully considered the PR's further comments but have not been persuaded to change my view of this.

In its response to my PD, the PR questioned the veracity of the sales notes. It can take some comfort from the fact I did the same when reaching my PD. I did not simply take the

sales notes at face value but considered them alongside the other available evidence, which includes a comment from Mr R that purchasing Signature Collection membership as an investment “never at any stage entered [his] thinking.”

The PR considers that I should place more weight on the Client Statement on the basis it was written closer to the Time of Sale. However, I’m satisfied it’s right for me to place more weight on testimony that has come directly from Mr R about his motivation at the Time of Sale, rather than testimony from Mrs W that has come via one or more third parties.

The PR says that as the Supplier’s pricing sheet refers to the “Unit Share %” provided under Mr R’s Signature Collection membership, this shows the investment element was an “important part” of the sales process and “played quite an important role” in his purchasing decision. But I don’t agree. As I explained in my PD, it is not in dispute that Signature Collection membership contained an investment element and it’s possible that it was marketed or sold to Mr R as an investment (although I have made no finding on this). However, the simple fact that his share in the Allocated Property was recorded on the pricing sheet does not offer an insight into his motivation for his purchase.

The PR also says that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my PD, the Timeshare Regulations did not ban products such as the Signature Collection. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in light of its specific circumstances.

So, 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 R’s decision to make the purchase was motivated by the prospect of a financial gain. And for that reason, I still don’t think the credit relationship between Mr R and the Lender was unfair to him.

S140A conclusion

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

Overall conclusion

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 Mr R’s Section 75 claim, 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

My final decision is to not uphold Mr R's complaint about Clydesdale Financial Services Limited, trading as Barclays Partner Finance, for the reasons provided.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 25 February 2026.

Alex Salton
Ombudsman