DRN-6107689

The complaint

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

Miss H is represented in her complaint by a professional representative ("PR").

What happened

I issued a provisional decision on Miss H's complaint on 19 December 2025, in which I set out the background to the matter and my provisional findings. A copy of that provisional decision is appended to and forms part of this final decision, so it's not necessary for me to go over all the details again. However, to summarise:

- Miss H entered an agreement to buy a timeshare (the "Purchase Agreement") from a timeshare provider (the "Supplier") on 11 November 2015 (the "Time of Sale"), for £22,216, with a balance to pay of £9,216 after trading in the majority of her existing timeshare products (points in the Supplier's "Vacation Club") with the Supplier. The balance was financed by a loan of the same amount from the Lender (the "Credit Agreement").

- The timeshare was a type of asset-backed timeshare which entitled Miss H to more than holiday rights. It also entitled her to a share in the proceeds of a property named on her purchase agreement (the "Allocated Property") after her contract came to an end. The family of asset-backed timeshares offered by the Supplier I will refer to as the "Fractional Club". This particular variant of the Fractional Club was known as the "Signature Collection". A unique feature of the Signature Collection was that it gave Miss H the right to stay in the Allocated Property during a specific week of the year, every other year.

- Miss H later complained, via PR, to the Lender about a number of concerns which included misrepresentations and breaches of contract by the Supplier giving her a claim against the Lender under Section 75 of the CCA, and (later) matters giving rise to an unfair credit relationship between her and the Lender.

- The Lender failed to respond to the complaint and it was then referred to the Financial Ombudsman Service for an independent assessment.

In my provisional decision I said I thought the complaint should be upheld. The full details and reasoning can be found in the appended document. Briefly however, I believed the complaint should be upheld because I thought the Supplier had likely breached Regulation 14(3) of the Timeshare Regulations 2010 when selling Miss H the Signature Collection timeshare, by marketing or selling the product to her as an investment (which was prohibited). I thought this had had a material impact on Miss H's purchasing decision, rendering her credit relationship with the Lender unfair to her within the meaning of Section

140A of the CCA. My reasons for this were, broadly-speaking, as follows:

- Miss H had recalled being told by the Supplier that the timeshare was valuable and could be sold for a profit in 2034.

- I thought the Supplier's sales and training materials which were aimed specifically at selling the Signature Collection product to existing Vacation Club members, framed the product as an investment in the sense that it was something that came with a hope or expectation of financial gain. I noted the sales materials appeared *expressly* to describe the product as an investment. Given this, and what Miss H had recalled being told, I thought it was more likely than not that the Supplier had sold or marketed the Signature Collection to her in that way.

- While I noted Miss H hadn't expressly said she had bought the Signature Collection product because she thought it was an investment, I observed she had approached the Supplier to sell her Vacation Club points and was told they would only be taken as a trade-in against the Signature Collection, which could sell for a profit later. Considering this, I concluded:

"The fact Miss H had been enquiring about selling her Vacation Club points suggests she was not just looking to give the points back, but to receive money for them from the Supplier. And it seems she was then told that, while that wasn't possible, she could trade them in for a Fractional Club membership, which could make a profit when it was sold at the end of the term. I think it's likely that this prospect was a key factor in causing Miss H to go ahead rather than decide to stick with what she had, or explore other options for leaving her Vacation Club membership."

As I considered Miss H's credit relationship with the Lender had been rendered unfair to her, I considered fair compensation ought to be paid by the Lender to Miss H. This was again explained in detail in the appended provisional decision, but in general in involved reversing the purchase as far as practicable.

I asked the parties to the complaint to comment on my provisional decision. PR said Miss H accepted the provisional decision. The Lender said it disagreed. It apologised for its lack of engagement to date and provided further information for me to consider, including:

- The contractual paperwork dating to the Time of Sale.
- Miss H's purchase history from the Supplier.
- Miss H's history of management fee payments in relation to the Signature Collection.
- Miss H's history of taking holidays with the Supplier.
- Various notes from the Supplier's internal systems.

The Lender said it disagreed with the provisional decision for two broad reasons. I think it would be fair to summarise its reasons as follows:

- It didn't think it was likely the Supplier has marketed or sold the Signature Collection product to Miss H at the Time of Sale as an investment because:

    - It disagreed with my assessment of the Supplier's sales and training materials for the product. It didn't think this represented it to be an investment. Besides, there were disclaimers in the contractual paperwork which explained that it was not an investment.

    - It didn't find Miss H's testimony very convincing. She'd not provided a lot of

detail about how it was the Supplier had represented the product as an investment, beyond saying it was valuable and could be sold for a profit in 2034.

- It had concerns about the general accuracy of Miss H's testimony. For example, she had referred to buying 501 Vacation Club points in 2012/13 when actually she'd bought some real estate that year, and had bought the 501 points in 2004. She had also claimed to have been told the only way out of her Vacation Club points was to swap them for Signature Collection points, but notes from 2010 showed she was aware she could simply surrender her Vacation Club points. Finally, Miss H claimed to have been told she could stay in the Allocated Property in 2016, but it had in fact been explained to her at the Time of Sale that it wouldn't be possible.

- It considered Miss H had been motivated to purchase by the prospect of enhanced holidays, not because she thought the product was an investment. The Supplier's notes suggested this was why she had proceeded.

The case has been returned to me to review once more.

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.

However, I think it's important to address the points made by the Lender in response to my provisional decision, to explain why they don't change my views.

The way the Supplier sold the Signature Collection membership

The Lender says it has reviewed the Supplier's sales and training materials relevant to the Signature Collection product and doesn't think they represent it to be an investment. I described the specific materials I had reviewed in my provisional decision, so I assume the Lender has reviewed the same materials I have.

I am not sure how the Lender could have arrived at the conclusion that the materials in question do not represent the Signature Collection product to be an investment. To reiterate a point I made in my provisional decision – it's apparent from the materials that the Supplier pitched the product different depending on whether a prospective purchaser was a Vacation Club member (like Miss H) or an existing member of the Fractional Club family of products.

The materials which it appears the Supplier would have shown to Vacation Club members, or would have used to train its staff to sell the product to Vacation Club members, explicitly used the word "investment" to promote the Signature Collection. I see no reason, based on the Lender's comments, to depart from the following finding I made in my provisional decision:

"The slides I've discussed appear explicitly to frame the Fractional Club product as an investment in property – as opposed to just an investment in holidays. I can't be sure that Miss H would have been shown or seen these specific slides, but I think they are indicative of how the Supplier trained its staff to position the Fractional Club product to existing

Vacation Club members – as something which allowed them the flexibility to holiday in the same way as they could as existing members, with the added benefit of an investment in a property owned and managed by the Supplier. Whether or not the Supplier would have been so emphatic about the product as to have given assurances that Miss H would have made a financial gain from such a venture, I think it's likely it either expressly or impliedly framed the product to her as an investment in the sense that it was something that could lead to a financial gain or profit."

I acknowledge the Lender seeks to rely on disclaimers that appeared within the Supplier's standard sales paperwork, but I commented on the Supplier's standard disclaimers and declarations in my provisional decision and my views on why they aren't determinative of what happened at the Time of Sale haven't changed.

Reliability of Miss H's testimony

The Lender has also questioned Miss H's testimony. I agree Miss H doesn't say much beyond recalling the Supplier telling her the product was an investment which could be sold for a profit in 2034, but that is consistent with the way it appears the Supplier's staff were trained to frame the product, based on the sales and training materials I've considered. I don't find it a difficult claim to believe, in that context.

The Lender has other concerns about the testimony. It points out what it says are errors in recall, such as Miss H thinking 501 Vacation Club points had been bought in 2012/13 when they'd been bought in 2004. I agree that seems to be an error, but it isn't an error related to the sale in question, which I note took place just two years before Miss H was asked to recall what had happened. I'm not convinced it's enough to cast significant doubt over her testimony as a whole.

Another matter the Lender has expressed concerns about is Miss H's claim to have been told the only way to relinquish her Vacation Club points was to trade them in for the Signature Collection, when she was aware as far back as 2010 that she could simply surrender her Vacation Club points. I think that misses a crucial detail, which is that there is a difference between surrendering points for no return, and selling them for money. While I accept Miss H's testimony is not the clearest, she does suggest, in my view, that what she was looking to do was the *latter*, as she refers to wanting to "sell my points back". I think this is what she was talking about, not surrendering her points.

Finally, the Lender says it was explained to Miss H at the Time of Sale that she wouldn't be able to use her Allocated Property in 2016 because it was the show apartment, and so the Supplier would cover the fee to convert her right to stay in the Allocated Property into points for 2016. So, the Lender says, Miss H's recollections about this are inaccurate.

Having read the Supplier's notes, I can see that the subject of using the Allocated Property in 2016 may have been discussed at a meeting following the purchase on 11 November 2015. The note says *"…as the unit is not available for 2016 the conversion fee has been paid…"* (I observe the note doesn't say this was specifically highlighted to Miss H). That said, it's apparent Miss H was under the impression she *could* use the Allocated Property in 2016 as between 13 January 2016 and 29 January 2016 there were several phone calls with the Supplier in which this was discussed and she felt she had been given a different impression by the Supplier at the Time of Sale.

Based on the available evidence it appears that, if the situation concerning the 2016 usage of the Allocated Property was ever explained to Miss H at the Time of Sale, then it was verbally. None of the sales paperwork explains this – it all appears to indicate that the first

year Miss H would be able to occupy the Allocated Property was 2016. I'm not convinced that Miss H's confusion over this point is sufficient to say that the rest of her testimony is unreliable.

Miss H's motivations at the Time of Sale

The Lender says it is of the view that Miss H was materially motivated to make her purchase by the prospect of enhanced holiday benefits, not the product being an investment which might bear a profit.

As I noted in my provisional decision, I think a part of Miss H's decision to go ahead with her purchase at the Time of Sale was because she was interested in taking holidays. I said:

"None of this means Miss H was uninterested in other aspects of the Fractional Club membership. It seems she was interested in holidays, for example, as she wanted to stay in the Allocated Property in 2016 and was very unhappy when she was apparently informed that she couldn't do so. Given the nature of the product, it's not surprising that Miss H would have been interested in using it for holidays also."

But I remain of the view that the prospect of the Signature Collection product being an investment was material to Miss H's purchasing decision. And some of the information the Lender has provided recently in fact lends some additional weight to this conclusion.

The key additional piece of information from the Lender is that Miss H had made a purchase of an investment property from the Supplier's "Estates" arm in 2012. I think this shows that Miss H had *already* displayed an interest in investing in property with the Supplier and not just using the Supplier's products for holidays.

Ultimately, I think Miss H wanted to sell her Vacation Club points and was offered the opportunity to trade them in for the Signature Collection product. This would give her guaranteed holidays in a luxury apartment (the Allocated Property) and an interest in said apartment which could lead to a profit in the future. As the Supplier's marketing literature described it – it would have seemed to be the "Best of Both Worlds". I think Miss H's purchasing history and testimony demonstrates that both these things were likely to be material to her decision to enter the Purchase Agreement.

Conclusion

In light of the above, I remain of the view that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale and that this had a material impact on Miss H's decision to enter the Purchase Agreement and linked Credit Agreement. It follows that I consider the credit relationship between Miss H and the Lender was rendered unfair to her and that the Lender should take action to put things right.

Fair Compensation

Note: the following section is copied from the appended provisional decision.

Having found that Miss H would not have agreed to purchase Fractional Club membership at the Time of Sale were it not for the breach of Regulation 14(3) of the Timeshare Regulations by the Supplier (as deemed agent for the Lender), and the impact of that breach meaning that, in my view, the relationship between the Lender and the Consumer was unfair under section 140A of the CCA, I think it would be fair and reasonable to put her back in the position she would have been in had she not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Miss H agrees to assign to the Lender her Fractional Points or hold them on trust for the Lender if that can be achieved.

Miss H was an existing Vacation Club member and the majority of her Vacation Club points were traded in against the purchase price of Fractional Club membership. Under the Vacation Club membership, she had an unknown number of Vacation Club points[1]. And, like Fractional Club membership, she had to pay annual management charges as a Vacation Club member. So, had Miss H not purchased Fractional Club membership, she would have always been responsible to pay an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Miss H from the Time of Sale as part of her Fractional Club membership should amount only to the difference between those charges and the annual management charges she would have paid as an ongoing Vacation Club member.

So, here's what I think needs to be done to compensate Miss H with that being the case – whether or not a court would award such compensation:

(1) The Lender should refund Miss H's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.

(2) In addition to (1), the Lender should also refund the difference between Miss H's Fractional Club annual management charges paid after the Time of Sale and what her Vacation Club annual management charges would have been had they not purchased Fractional Club membership.

(3) The Lender can deduct:

   i. The value of any promotional giveaways that Miss H used or took advantage of; and
   ii. The market value of the holidays* Miss H took using her Fractional Points *if* the Points value of the holiday(s) taken amounted to more than the total number of Vacation Club Points she would have been entitled to use at the time of the holiday(s) as an ongoing Vacation Club member. However, this deduction should be proportionate and relate only to the additional Fractional Points that were required to take the holiday(s) in question.
   For example, if Miss H took a holiday worth 2,550 Fractional Points and she would have been entitled to use a total of 2,500 Vacation Club Points at the relevant time, any deduction for the market value of that holiday should relate only to the 50 additional Fractional Points that were required to take it. But if she would have been entitled to use 2,600 Vacation Club Points, for instance, there shouldn't be a deduction for the market value of the relevant holiday.

   (I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)

(4) Simple interest** at 8% per annum should be added to each of the Net Repayments

[1] But believed to be 2,501 points prior to the Time of Sale, and 501 points after.

from the date each one was made until the date the Lender settles this complaint.

(5) The Lender should remove any adverse information recorded on Miss H's credit file in connection with the Credit Agreement reported within six years of this decision.

(6) If Miss H's Fractional Club membership is still in place at the time of this decision, as long as she agrees to hold the benefit of her interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify her against all ongoing liabilities as a result of her Fractional Club membership.

*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Miss H took using her Fractional Points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect her usage (subject to the proportionality provisions outlined in (3) ii. above).

**HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give the consumer a certificate showing how much tax it's taken off if they ask for one.

My final decision

For the reasons explained above, and in the appended provisional decision, I uphold this complaint and direct Clydesdale Financial Services Limited to take the actions set out in the "Fair Compensation" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 24 February 2026.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at a different set of conclusions to our Investigator, so I need to give the parties a further opportunity to make submissions, before I make my decision final.

The deadline for both parties to provide any further comments or evidence for me to consider is 5 January 2026. Unless the information changes my mind, my final decision is likely to be along the following lines.

If Clydesdale Financial Services Limited trading as Barclays Partner Finance accepts my provisional decision, it should let me know. If Miss H also accepts, I may arrange for the complaint to be closed as resolved at this stage without a final decision.

The complaint

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

What happened

Miss H purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 11 November 2015 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 2,090 fractional points at a cost of £22,216 (the 'Purchase Agreement'). But after trading in her existing timeshare, she ended up paying £9,216 for membership of the Fractional Club.

Fractional Club membership was asset backed – which meant it gave Miss H more than just holiday rights. It also included a share in the net sale proceeds of a property named on her Purchase Agreement (the 'Allocated Property') after her membership term ends. The specific version of the Fractional Club Miss H purchased a membership of was known as the "Signature Collection", which entitled her, every even year, to take a specific week of holiday in the Allocated Property, which was one of the more luxurious apartments in the Supplier's portfolio. Alternatively, also every even year, she could forgo her week in the Allocated Property and use the 2,090 points to book accommodation elsewhere.

Miss H paid for her Fractional Club membership by taking finance of £9,216 from the Lender (the 'Credit Agreement'). This loan was arranged by and paid to the Supplier.

Miss H – using a professional representative (the 'PR') – wrote to the Lender on 9 November 2019 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving her a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. A breach of contract by the Supplier giving her a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.

Much later, after the complaint had already been referred to the Financial Ombudsman Service, PR also alleged:

3. That the Lender had been a party to a credit relationship with Miss H that was unfair to her within the meaning of Section 140A of the CCA.
4. That the Lender had lent to Miss H irresponsibly.

I will discuss PR's late addition of these points of complaint further on in this decision.

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

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

1. told her that the only way out of her previous timeshare (a "Vacation Club" membership) was to trade in her Vacation Club points for a Fractional Club membership, when that wasn't true.
2. told her that Fractional Club membership would be like a pension fund and guaranteed her a return on investment, and that she could sell it any time if she wanted to.

Miss H says that she 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, she has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to her.

(2) Section 75 of the CCA: the Supplier's breach of contract

Miss H says that her contract with the Supplier stated that she would be able to use her week in the Allocated Property in 2016, and that the Supplier booked this week for her. However, she later found out that the Supplier had cancelled her booking because the apartment wasn't ready and she was told she wouldn't be able to use it until 2018, despite having paid to use it in 2016.

As a result of the above, Miss H says that she has a breach of contract claim against the Supplier, and therefore, under Section 75 of the CCA, she has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to her.

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

PR's later correspondence set out one reason why Miss H says that the credit relationship between her and the Lender was unfair to her under Section 140A of the CCA:

1. Fractional Club membership was marketed and sold to her as an investment in breach of regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').

(4) Irresponsible Lending

PR's later correspondence also suggested that, given Miss H's age and income, the Lender's decision to grant her the credit agreement had been irresponsible and contrary to the regulations in place at the time.

The Lender failed to respond to Miss H's complaint other than to send letters apologising for having not been able to give an answer.

Eventually, in November 2021, PR referred the complaint to the Financial Ombudsman Service. It was while the case was waiting to be assessed by us, in early December 2023, that PR added points (3) and (4) above, to the complaint.

The complaint was assessed by an Investigator who, having considered the information on file, rejected the complaint.

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

The legal and regulatory context

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

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred 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 here.

What I've provisionally 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. And having done that, I currently think that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and/or selling Fractional Club membership to Miss H as an investment, which, in the circumstances of this complaint, rendered the credit relationship between her and the Lender unfair to her for the purposes of Section 140A of the CCA.

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, while I recognise that there are a number of aspects to Miss H complaint, it isn't necessary to make formal findings on all of them. This includes the allegations that the Supplier misrepresented certain things to her, or was in breach of contract by failing to allow her to stay in the Allocated Property in 2016.

That's because, even if those aspects of the complaint ought to succeed, the redress I'm currently proposing puts Miss H in the same or a better position than she would be if the redress was limited to what would have been appropriate, had the other parts of her complaint been successful.

<u>The late submission of complaint points by PR</u>

It's unfortunate that PR waited until December 2023, more than four years after it initially made the complaint to the Lender, to allege that the Lender had been a party to an unfair credit relationship with Miss H.

I've thought carefully about whether it was appropriate to allow such a late submission of a new complaint issue which had not, as far as I'm aware, been put to the Lender previously. In this case I think it is appropriate for me to allow this submission and to deal with it in my decision, for the following reasons:

- At the time PR made this new point of complaint, it would still have been "in time" as far as the Financial Ombudsman Service's rules are concerned, meaning we have the power to consider it. Complaints about unfair credit relationships can be brought for up to

six years after the end of the credit relationship in question. I'm aware from loan statements shared by PR, that the Credit Agreement (and therefore the credit relationship) was still running as late as 26 November 2018. So Miss H had until at least November 2024 to bring a complaint about that credit relationship allegedly being unfair.

- The underlying *concerns* (i.e. the Supplier having marketed or sold the timeshare to Miss H as an investment) giving rise to the complaint can be seen as far back as the original complaint, made in November 2019, and even earlier, in a witness statement Miss H gave in February 2017. The complaint is not something which has sprung from nowhere.

- The Lender has displayed an almost complete lack of engagement with the complaint process from November 2019 to date. It failed to answer the original complaint, failed to provide any information to the Financial Ombudsman Service after the complaint was referred to us, and failed to provide any information following our Investigator's assessment, despite saying that it would do so. So while I recognise that ordinarily it would be proper to allow the Lender an opportunity to respond to complaints which have not been brought to its attention before deciding these complaints myself, in the present circumstances I don't think that's appropriate.

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

Having considered the entirety of the credit relationship between Miss H and the Lender along with all of the circumstances of the complaint, I 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
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 Miss H and the Lender.

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

The Lender does not dispute, and I am satisfied, that Miss H'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 Fractional Club 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 Miss H says that the Supplier did exactly that at the Time of Sale – saying the following in her February 2017 witness statement:

"I was told that the ownership was valuable and could be sold at a profit in 2034"

Miss H alleges, therefore, that the Supplier breached Regulation 14(3) at the Time of Sale because it told her that the Fractional Club membership could make her a profit when the fractional asset was sold at the end of her membership.

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.

Miss H's share in the Allocated Property clearly constituted an investment as it offered her the prospect of a financial return – whether or not, like all investments, that was more than what she 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 Miss H as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

While there is very little evidence to go on in this case (I would note again the Lender's lack of engagement, which has led to the evidence being rather "thin"), I am aware that the Supplier generally made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Miss H, the financial value of her 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, normally disclaimers in the contemporaneous paperwork that state that Fractional Club membership was for the primary purpose of holidays and that the Supplier was unable to make representations as to the future value of the share in the Allocated Property.

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork.

So, I have considered:

(1) whether it is more likely than not that the Supplier, at the Time of Sale, sold or marketed membership of the Fractional Club as an investment, i.e. told Miss H or led her to believe during the marketing and/or sales process that membership of the Fractional Club was an investment and/or offered her the prospect of a financial gain (i.e., a profit); and, in turn
(2) whether the Supplier's actions constitute a breach of Regulation 14(3).

And for reasons I'll now come on to, given the facts and circumstances of this complaint, I think the answer to both of these questions is 'yes'.

How the Supplier marketed and sold the Fractional Club membership

During the course of the Financial Ombudsman Service's work on complaints about the sale of timeshares, the Supplier has provided training material used to prepare its sales representatives. This includes a document titled *"2015 Spain Fractionals at Signature Suite Collection Sales Training Manual for [Fractional Club] and Vacation Club Owners".*

It's my understanding that this document (the "Signature Training Manual") was used to train sales representatives in how to sell the Signature variation of the Fractional Club membership, so I think it's likely to be relevant to Miss H's purchase. Based on my reading of the Signature Training Manual, it seems representatives were trained to pitch the product in different ways depending on whether a prospective purchaser was already a Fractional Club member, or a member of the Vacation Club (like Miss H).

Considering the content of the Signature Training Manual which appears to have been part of the sales pitch to all prospective purchasers, I note the following words appeared on page 11, focused on the Supplier's 30th anniversary:

> *"When our members asked if they could buy a [Supplier] property in its entirety, we developed [Supplier] Estates which has been tremendously successful and has now sold over 2000 properties on our resorts all around the world.*
>
> *In recent years our members requested shorter term products so to fulfil that demand we created our Fractional Property Owners Club which is a shorter term product with a fixed asset attached providing an exit in 19 years and money back."*

Moving to page 15 of the Signature Training Manual, it seems the next part of the pitch involved the Supplier introducing members to its "Estates" arm mentioned above, which I understand would pitch the sale of whole properties to a prospective purchaser. After this, there were a series of general updates and reminders of the various services available through the Supplier, and then members would be taken to a show apartment and go through a process the Supplier called "price conditioning". Miss H recalled being taken to an apartment which she was told would be her Allocated Property.

After this point it appears the sales pitches diverged, and Vacation Club members were given an explanation of the Fractional Club concept, of which the Signature product was a variation. Prospective purchasers were taken through the development of the Supplier's products, from fixed week timeshares, floating week timeshares, the Vacation Club, and then the "Fractional Property Owners Club".

On page 106 a set of slides compared the Vacation Club product to the Supplier's "Estates" product, which involved the purchase of a holiday home. Positive attributes of the Estates product as compared to the Vacation Club product included "Investment", "Use/sell" and "Money back". Drawbacks included "Large capital outlay" and "Fixed location". Notably, a drawback attributed to the Vacation Club product was "Investment in *Holidays*".

The next slide went on to compare both the previous options with the Fractional Club product, which was described as the "BEST OF BOTH WORLDS". Positive attributes of the product on this slide included those attributed to the Estates product: "Investment", "Use/sell", and "Money back", as well as some of those attributed to the Vacation Club product, such as "Choice/flexibility".

When the Government consulted on the implementation of the Timeshare Regulations, it discussed what marketing or selling a timeshare as an investment might look like – saying that *'[a] trader must not market or sell a timeshare or [long-term] holiday product as an investment. For example, there should not be any inference that the cost of the contract would be recoupable at a profit in the future (see regulation 14(3)).'*[2] And in my view that must have been correct because it would defeat the consumer-protection purpose of Regulation 14(3) if the concepts of marketing and selling a timeshare as an investment were interpreted too restrictively.

So, if a supplier *implied* to consumers that future financial returns (in the sense of possible profits) from a timeshare were a good reason to purchase it, I think its conduct was likely to have fallen foul of the prohibition against marketing or selling the product as an investment.

The slides I've discussed appear *explicitly* to frame the Fractional Club product as an investment in property – as opposed to just an investment in holidays. I can't be sure that Miss H would have been shown or seen these specific slides, but I think they are indicative of how the Supplier trained its staff to position the Fractional Club product to existing Vacation Club members – as something which allowed them the flexibility to holiday in the same way as they could as existing members, with the added benefit of an investment in a property owned and managed by the Supplier. Whether or not the Supplier would have been so emphatic about the product as to have given assurances that Miss H would have made a financial gain from such a venture, I think it's likely it either expressly or impliedly framed the product to her as an investment in the sense that it was something that *could* lead to a financial gain or profit.

Indeed, that appears to be how Miss H understood the product that was pitched to her. She said she was told it was valuable and that it could be sold for a profit in 2034. And given what I've said above, I think that understanding is more likely than not to have come about because the Supplier's representatives stated or implied that a good reason to buy Fractional Club membership was because it was an investment. In light of this, I think the Supplier breached Regulation 14(3) of the Timeshare Regulations 2010 at the Time of Sale.

Was the credit relationship between the Lender and the Consumer rendered unfair?

Having found 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 Miss H and the Lender under the Credit Agreement and related Purchase Agreement.

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.

It also it seems to me in light of *Carney* and *Kerrigan* that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Miss H and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

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[2] The Department for Business Innovation & Skills *"Consultation on Implementation of EU Directive 2008/122/EC on Timeshare, Long-Term Holiday Products, Resale and Exchange Contracts (July 2010)"*. https://assets.publishing.service.gov.uk/media/5a78d54ded915d0422065b2a/10-500-consultation-directive-timeshare-holiday.pdf

Miss H's 2017 witness statement is not especially specific about her reasons for going ahead with the purchase at the Time of Sale, however I think the prospect of a financial gain from Fractional Club membership was likely to be material to her decision. I think this comes across implicitly in her testimony. Miss H suggests she had asked the Supplier about selling her existing Vacation Club points and had been told this wasn't possible, except as a trade-in against a Fractional Club membership. She goes on to say she was told the Fractional Club membership was valuable and could be sold at a profit in 2034.

The fact Miss H had been enquiring about selling her Vacation Club points suggests she was not just looking to give the points back, but to receive money for them from the Supplier. And it seems she was then told that, while that wasn't possible, she could trade them in for a Fractional Club membership, which could make a profit when it was sold at the end of the term. I think it's likely that this prospect was a key factor in causing Miss H to go ahead rather than decide to stick with what she had, or explore other options for leaving her Vacation Club membership.

None of this means Miss H was uninterested in other aspects of the Fractional Club membership. It seems she was interested in holidays, for example, as she wanted to stay in the Allocated Property in 2016 and was very unhappy when she was apparently informed that she couldn't do so. Given the nature of the product, it's not surprising that Miss H would have been interested in using it for holidays also.

But as Miss H says (plausibly in my view) that Fractional Club membership was marketed and sold to her at the Time of Sale as something that offered her more than just holiday rights, on the balance of probabilities, I think her purchase was motivated by her share in the Allocated Property and the possibility of a profit as that share was one of the defining features of membership that marked it apart from her existing membership. And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision she ultimately made.

Miss H has not said or suggested, for example, that she would have pressed ahead with the purchase in question had the Supplier not led her to believe that Fractional Club membership was an appealing investment opportunity. And as she faced the prospect of borrowing and repaying a substantial sum of money while subjecting herself to long-term financial commitments, had she not been encouraged by the prospect of a financial gain from membership of the Fractional Club, I'm not persuaded that she would have pressed ahead with the purchase regardless.

Conclusion

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Miss H under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A. And with that being the case, taking everything into account, I think it is fair and reasonable that I uphold this complaint.

Fair Compensation

Having found that Miss H would not have agreed to purchase Fractional Club membership at the Time of Sale were it not for the breach of Regulation 14(3) of the Timeshare Regulations by the Supplier (as deemed agent for the Lender), and the impact of that breach meaning that, in my view, the relationship between the Lender and the Consumer was unfair under section 140A of the CCA, I think it would be fair and reasonable to put her back in the position she would have been in had she not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Miss H agrees to assign to the Lender her Fractional Points or hold them on trust for the Lender if that can be achieved.

Miss H was an existing Vacation Club member and the majority of her Vacation Club points were traded in against the purchase price of Fractional Club membership. Under the Vacation Club membership, she had an unknown number of Vacation Club points. And, like Fractional Club membership, she had to pay annual management charges as a Vacation Club member. So, had Miss H not purchased Fractional Club membership, she would have always been responsible to pay an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Miss H from the Time of Sale as part of her Fractional Club membership should amount only to the difference between those charges and the annual management charges she would have paid as an ongoing Vacation Club member.

So, here's what I think needs to be done to compensate Miss H with that being the case – whether or not a court would award such compensation:

(7) The Lender should refund Miss H's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.

(8) In addition to (1), the Lender should also refund the difference between Miss H's Fractional Club annual management charges paid after the Time of Sale and what her Vacation Club annual management charges would have been had they not purchased Fractional Club membership.

(9) The Lender can deduct:

iii. The value of any promotional giveaways that Miss H used or took advantage of; and

iv. The market value of the holidays* Miss H took using her Fractional Points *if* the Points value of the holiday(s) taken amounted to more than the total number of Vacation Club Points she would have been entitled to use at the time of the holiday(s) as an ongoing Vacation Club member. However, this deduction should be proportionate and relate only to the additional Fractional Points that were required to take the holiday(s) in question.
For example, if Miss H took a holiday worth 2,550 Fractional Points and she would have been entitled to use a total of 2,500 Vacation Club Points at the relevant time, any deduction for the market value of that holiday should relate only to the 50 additional Fractional Points that were required to take it. But if she would have been entitled to use 2,600 Vacation Club Points, for instance, there shouldn't be a deduction for the market value of the relevant holiday.

(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)

(10) Simple interest** at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.

(11) The Lender should remove any adverse information recorded on Miss H's credit file in connection with the Credit Agreement reported within six years of this decision.

(12) If Miss H's Fractional Club membership is still in place at the time of this decision, as long as she agrees to hold the benefit of her interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify her against all ongoing liabilities as a result of her Fractional Club membership.

*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Miss H took using her Fractional Points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect her usage (subject to the proportionality provisions outlined in (3) ii. above).

**HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give the consumer a certificate showing how much tax it's taken off if they ask for one.

My provisional decision

For the reasons explained above, I am minded to uphold Miss H's complaint.

Will Culley
Ombudsman