

## The complaint

Mr M complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance (“Lender”) has acted unfairly and unreasonably in turning down his claim under section 75 of the Consumer Credit Act 1974 (“CCA”) and in being party to an unfair credit relationship with him under section 140A of the CCA.

## What happened

In 2016 whilst on holiday Mr M and Ms M (then Ms G) purchased a timeshare - Fractional Points Club Membership (“FPOC2”) - from a timeshare provider (“Supplier”). The date of the agreement (“Purchase Agreement”) was 20 July 2016 (“Time of Sale”). The membership gave them 810 Fractional Points – equivalent to one week’s Fractional Rights.

FPOC2 was asset backed, in that as well as holiday rights it entitled Mr M and Ms M to a share in the sale proceeds of a property (“the Allocated Property”) named on the Purchase Agreement at the end of the membership term of 16 years.

The total cost of FPOC2 was £15,648 which was paid for by a restricted use Fixed Sum Loan Agreement (“the Credit Agreement”) between Mr M and the Lender.

The duration of the Credit Agreement was 180 months – so 15 years – and the Annual Percentage Rate was 11.9%. The total charge for credit was £16,833.40 over the term of the agreement, making the total amount payable under the Credit Agreement £32,531.40. In addition to this management fees were payable each year for the Allocated Property.

The following January, Mr M and Ms M traded in their FPOC2 membership to join the Signature Collection, which was a different scheme run by the Supplier. These sale arrangements are the subject of a separate complaint to us.

Mr M - using a professional representative (the ‘PR’) – wrote to the Lender on 4 August 2022 (the ‘Letter of Complaint’) to raise a number of different concerns. As those concerns haven’t changed since they were first raised, and as both sides are familiar with them, it isn’t necessary to repeat them in detail here beyond the summary above.

The Lender did not provide a final response to the complaint so the PR referred it to us. It was considered by one of our investigators who didn’t think it should be upheld. Mr M didn’t agree with the investigator the complaint was referred to me for decision. I issued a provisional decision concluding that the complaint shouldn’t be upheld. In summary my key findings were as follows:

- The alleged misrepresentations Mr M says the Supplier made don’t amount to actionable misrepresentations and the Lender didn’t act unfairly in turning down the Section 75 claim.
- There is no evidence to support a finding that the money lent to Mr M was unaffordable and nor were their unfair terms in the Purchase Agreement and as such the credit relationship wasn’t rendered unfair for those reasons.

- Mr M's and Ms M's explanation of what happened at the Time of Sale doesn't support a finding they purchased Fractional Club membership because it was an investment, as they make no mention of this being a reason for their purchase in their testimony.
- Mr M said in a later email (dated 21 January 2024) that they were told they would get a good return on their investment but this was sent after the judgment in the case of *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) (Shawbrook v FOS)* and there is a clear risk what he has said has been influenced by what he has read following that judgment and I give it little if any weight to this.

I concluded, given the facts and circumstances of this complaint, that the Lender hadn't acted unfairly or unreasonably when it dealt with Mr M's Section 75 claim(s), 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. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

The Lender responded to the PD and accepted it. The PR also responded but didn't accept the PD and provided some further comments and evidence they wish to be considered. This included anew argument about undisclosed commission. I sent a side letter to both parties addressing that issue, explaining why I didn't consider this rendered the credit relationship unfair to Mr M. I gave both parties the opportunity of responding to that. The Lender responded and agreed with what I said but the PR provided no response.

Having received the relevant responses from both parties, I'm now finalising my decision.

### **The legal and regulatory context**

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

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

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

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

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

### **The FCA's Principles**

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

complaint:

- Principle 6
- Principle 7
- Principle 8

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so I don't think this complaint should be upheld for the reasons set out in my provisional decision and below.

Following the responses from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

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

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

The PR's further comments in response to the PD in the main relate to the issue of whether the credit relationship between Mr M and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr M as an investment at the Time of Sale. And, as noted above, they've also now argued for the first time that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship.

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

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

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

I explained in the PD why I wasn't persuaded by what Mr M had said that they were motivated to purchase Fractional Club membership because it was an investment. The PR disagrees with my finding about that but has not provided any new information or evidence that would lead me to change my finding on this but I will briefly comment on what they have said.

The PR refers to what Mr M and Ms M said about a subsequent purchase of fractional points in 2017 which is the subject of a separate complaint to our service – namely that they were told that the resale of the fractional would be much higher and they would therefore get a better lump sum. The PR argues this is evidence that at the Time of Sale in 2016 they were

told they get a lump sum.

But even if I accept Mr M and Ms M were told in 2016 they would get a lump sum, this isn't persuasive evidence they were motivated to purchase Fractional Club membership because they hoped to make some gain or profit as a 'lump sum' doesn't of itself suggest this.

The PR seeks to rely on what Mr M said in the later email of 21 January 2024 where he refers to them being told they get a return on their investment. But I explained why I didn't place much if any weight on this evidence in my PD and I can see no basis for changing this. If this had been a reason for their purchase I can see no reason they didn't say this in their earlier statement. And , given this was only provided after the judgment in *Shawbrook & BPF v FOS* there is a real risk what Mr M has said in the email has been influenced by what he has read about the judgment and I place no weight on it. In saying that I have considered what the PR has said about Mr M not reading about the judgment and not being able to understand the issues because of their complexity I don't find this a credible explanation for what he said in his email when compared to his earlier statement.

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

The PR also said 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 provisional decision, the Timeshare Regulations did not ban products such as the Fractional Club. 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 the light of its specific circumstances.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3), I'm not persuaded Mr M's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mr M and the Lender was unfair to him for this reason.

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

The PR raised a new issue in response to the opinion of the Investigator, namely that a payment of commission from the Lender to the Supplier at the Time of Sale means the complaint should be upheld because, simply put, information in relation to that payment went undisclosed at the Time of Sale. I addressed this in a side letter sent to the parties after my PD explaining why I didn't think this was a reason to uphold the complaint. The Lender agreed with what I said and the PR didn't respond. In the circumstances I see no reason to change what I said which I set out below.

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 Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mr M 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 M, 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 Mr M 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 is 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 M.

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 M entered into wasn't

high. At £391.20 it was only 2.5% of the amount borrowed and even less than that as a proportion of the charge for credit. So, had he 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 M wanted Fractional Club 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 M 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 M.

#### **S140A conclusion**

Given all of 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 M and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

#### **Commission: The Alternative Grounds of Complaint**

While I've found that Mr M'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 M'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 M (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 M 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 M 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.

### **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 M's Section 75 claim(s), 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**

I don't uphold this complaint for the reasons I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 March 2026.

Philip Gibbons  
**Ombudsman**