

The complaint

Mr M'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').

What happened

Mr and Mrs M were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Signature Collection' – which they bought on 19 April 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy fractional rights equivalent to 1,820 fractional points at a cost of £13,010 (the 'Purchase Agreement') after trading in some of their existing timeshare.

Signature Club membership gave Mr and Mrs M the right to stay in a specified holiday suite (the 'Allocated Property') in a specified week each year. Alternatively, Mr and Mrs could give up that right in any given year in exchange for 1,820 fractional points to spend on holidays with the Supplier.

Signature Club membership was also asset backed – which meant it also gave Mr and Mrs M a share in the net sale proceeds of the Allocated Property after their membership term ends.

Mr and Mrs M paid for their Signature Collection membership by taking finance of £40,288 from the Lender (the 'Credit Agreement') – the additional amount being used to refinance existing loans used to pay for earlier timeshare purchases.

Mr M – using a professional representative (the 'PR') – wrote to the Lender on 22 March 2022 (the 'Letter of Complaint') to raise several different concerns. Since then, the PR has raised some further matters it says are relevant to the outcome of this complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender could not resolve the complaint in the time allowed and the PR referred it to the Financial Ombudsman Service.

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

The Lender accepted this and made an offer of settlement. But Mr M did not think that fairly compensated him, so I have been asked to make a decision. I issued a provisional decision explaining what I think should happen to put things right – bearing in mind that it is accepted by both parties that the complaint should be upheld.

The Lender said it accepted my provisional decision. The PR said that Mr M largely

accepted my provisional decision but was concerned that he did not want to hold a membership with the Supplier anymore. He said he had last paid management charges for the 2022 usage year, and as far he was concerned no longer held a timeshare with the Supplier.

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.

Because both sides accept this complaint should be upheld, this decision simply sets out what the Lender should do to put things right..

Putting things right

The Lender has in effect accepted that Mr and Mrs M 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 the relationship between the Lender and Mr M was unfair under section 140A of the CCA. Given this, I think it would be fair and reasonable to put Mr M back in the position he would have been in had he not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr and Mrs M both agree to assign to the Lender their Fractional Points or hold them on trust for the Lender if that can be achieved.

Mr and Mrs M were existing Fractional Property Owners Club members ('FPOC Membership') and his membership was traded in against the purchase price of Signature Club membership in at the Time of Sale (which I'll refer to as 'SC Membership 1'). Under FPOC Membership, Mr and Mrs M had X Fractional Points – which they traded in as part of the Purchase Agreement. And, like SC Membership 1, they had to pay annual management charges as part of FPOC Membership. So, had Mr and Mrs M not purchased SC Membership 1, they 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 Mr and Mrs M from the Time of Sale as part of SC Membership 1 should amount only to the difference between those charges and the annual management charges they would have paid as part of FPOC Membership.

Part of what Mr M borrowed at the Time of Sale was used to repay the borrowing under 'Loan 1' and 'Loan 2', which had been used to pay for earlier timeshare purchases, and which always had to be repaid. I can't see that any unfairness under Loan 1 and Loan 2 affected the fairness of the credit relationship under the Credit Agreement and related Purchase Agreement. So, I do not think it would be fair for the Lender to refund everything that was paid and, if relevant, due to be repaid under the Credit Agreement. Otherwise, Mr M would be in a better position than he would have been if Mr and Mrs M hadn't purchased SC Membership 1. Given that, I think this ought to be reflected in my redress when remedying the unfairness I have found.

On 25 July 2017 (the 'Time of Upgrade'), Mr and Mrs M upgraded SC Membership 1 by trading in their 1,820 Fractional Points towards the purchase of another Signature Collection membership (which I'll call 'SC Membership 2') and entering into a new purchase agreement for a total of 3,640 Fractional Points. The Credit Agreement remained in place after the Time of Upgrade. Formally, the new purchase agreement superseded the old one, but in my view, it just supplemented Mr and Mrs M's SC Membership 1, rolling over their existing Fractional Points into SC Membership 2. And I don't think the upgrade ended the unfairness under the Credit Agreement and related Purchase Agreement that stemmed from the acts and/or

omissions of the Supplier at the Time of Sale given the facts and circumstances of this complaint. So, I think that there were ongoing effects of unfairness from Mr and Mrs M's purchase of SC Membership 1 and the Credit Agreement that the Lender is answerable for.

However, I recognise that the upgrade in question was paid for without taking any additional credit. And for that reason, I'm not persuaded the Lender should have to answer for the financial consequences specifically associated with the 1,820 additional Fractional Points Mr and Mrs M purchased at the Time of Upgrade as part of SC Membership 2. So, in my view, the Lender needs to refund a proportion of the management charges payable after the Time of Upgrade that relate only to the 1,820 Fractional Points Mr and Mrs M held under SC Membership 1 – which, on this occasion, equates to 50% of the annual management charges paid after the Time of Upgrade under SC Membership 2.

Fair compensation

So, here's what I think needs to be done to compensate Mr and Mrs M – whether or not a court would award such compensation:

- (1) The Lender should refund the difference between Mr M's repayments to it under the Credit Agreement and what he would have paid under Loan 1 and Loan 2, including the difference between any sums paid to settle the debt owing under the Credit Agreement and what would have needed to have been paid to settle Loan 1 and Loan 2. The Lender should also reduce any outstanding balance under the Credit Agreement, if there is one, so that Mr M would only owe now what he would have owed under Loan 1 and Loan 2 and change any future repayments so that he is making the same repayments he was towards Loan 1 and Loan 2.
- (2) In addition to (1), the Lender should also refund the difference between the annual management charges paid after the Time of Sale under SC Membership 1 and what Mr and Mrs M's annual management charges would have been under FPOC Membership had they not purchased SC Membership 1 (where the charges were higher under SC Membership 1).

(3) The Lender can deduct:

- i. The value of any promotional giveaways offered at the Time of Sale that Mr and Mrs M used or took advantage of; and
- ii. Before the Time of Upgrade, the market value of the holidays* Mr and Mrs M took using SC Membership 1 if the Points value of the holiday(s) taken amounted to more than the total number of Fractional Points they would have been entitled to use at the time of the holiday(s) as ongoing FPOC Membership members. 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 Mr and Mrs M took a holiday worth 2,550 Fractional Points after the Time of Sale and they would have been entitled to use a total of 2,500 Fractional Points under FPOC Membership 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 they would have been entitled to use 2,600 Fractional Points under FPOC Membership, for instance, there shouldn't be a deduction for the market value of the relevant holiday.

And

- iii. After the Time of Upgrade, the market value of the holidays* Mr and Mrs M took using SC Membership 2 if the Points value of the holiday(s) taken amounted to

more than the total number of Fractional Points they would have been entitled to use at the time of the holiday(s) as ongoing FPOC Membership members. However, this deduction should relate only to 50% of the additional Fractional Points that were required to take the holiday(s) in question (since only 50% of the points available after the Time of Upgrade were available under SC Membership 1).

For example, if Mr and Mrs M took a holiday worth 2,550 Fractional Points after the Time of Upgrade and they would have been entitled to use a total of 2,500 Fractional Points under FPOC Membership at the relevant time, any deduction for the market value of that holiday should relate only 50% of the additional 50 Fractional Points they would have had under FPOC Membership. But if they would have been entitled to use 2,600 Fractional Points under FPOC Membership, for example, 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 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 Mr M's credit file in connection with the Credit Agreement reported within six years of this decision.
- (6) If SC Membership 2 is still in place at the time of this decision, the Lender must ask the Supplier to reduce the number of Fractional Points they hold by 1,820 Fractional Points.

*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 Mr and Mrs M took using their 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 their usage.

**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.

Note on SC Membership 2

My understanding is that if SC Membership 2 is suspended then it will remain so, even after the Supplier reduces the number of Fractional Points assigned to that suspended membership. This would only effect Mr M if he later chooses to reinstate SC Membership 2.

Mr M has said that he no longer wishes to have any timeshare with the Supplier. If Mr M has not officially surrendered SC Membership 2 but wishes to do so, he would need to contact the Supplier directly to arrange that.

My final decision

I uphold this complaint and direct Clydesdale Financial Services Limited to pay fair compensation to Mr M as 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 10 March 2026.

Phillip Lai-Fang
Ombudsman

