DRN-6149440

The complaint

Mr G'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 unfair credit relationships with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA'), and (2) deciding against paying claims under Section 75 of the CCA.

Background to the complaint

Mr G and his partner Mrs G 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 'Fractional Club' – points in which they purchased on the dates below:

- 2,200 fractional points on 8 May 2016 for £6,000, having traded in some of their existing fractional points ('Purchase Agreement 1')

- 1,420 fractional points on 15 February 2017 for £12,055, having traded in some of their existing fractional points ('Purchase Agreement 2')

  (which, when appropriate, I'll simply refer to as the 'Purchase Agreements')

As this complaint is concerned with the purchases on 8 May 2016 and 15 February 2017, those are the 'Times of Sale' for the purposes of my decision.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs G more than just holiday rights. It also included a share in the net sale proceeds of a property named on the relevant purchase agreement (which I'll refer to as the 'Allocated Properties') after their membership term ends.

Mr and Mrs G paid for their fractional points by taking the following amounts of finance of from the Lender:

- £36,223 on 8 May 2016 ('Credit Agreement 1'), which also consolidated lending they had taken out to finance previous purchases of fractional points

- £12,055 on 15 February 2017 ('Credit Agreement 2')

  (which, when appropriate, I'll simply refer to as the 'Credit Agreements')

As Mr G was the only borrower named on the Credit Agreements, this complaint has been brought in his name only.

Mr G – using a professional representative (the 'PR') – wrote to the Lender on 8 July 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 acknowledged Mr G's concerns as a complaint, but it did not go on to provide a final response.

The complaint was subsequently referred 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 G disagreed with the Investigator's assessment and asked for an Ombudsman's decision. So the complaint was passed to me to decide. I considered the matter and issued a provisional decision (the 'PD') dated 3 February 2026. In that decision, I said:

"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 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's to decide what's 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.

The legal and regulatory context

In considering what's fair and reasonable in all the circumstances of the complaint, I'm 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.

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's not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

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

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

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

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

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

- *Principle 6*

- *Principle 7*
- *Principle 8*

Section 75 of the CCA: the Supplier's misrepresentations at the Times 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.

In general, lenders can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 (the "LA"), as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose, and after a limitation defence would have been available in court. So, it's relevant to consider if Mr G's Section 75 claims were time-barred under the LA before they were put to the Lender.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued. Any claim against a lender under Section 75 is also "an action to recover any sum by virtue of any enactment" under Section 9 of the LA. Such claims also have a time limit of six years from the date the cause of action accrued.

In claims for misrepresentation, the cause of action accrues at the point a loss is incurred. In Mr G's case, that was at the Times of Sale because he entered into the agreements to purchase fractional club membership, and the related Credit Agreements to finance the purchases, based on the alleged misrepresentations of the Supplier which he says he relied on.

Mr G first notified the Lender of his Section 75 claims on 8 July 2022. That was less than six years after the Time of Sale of his second purchase, so his claim relating to his second purchase was made within the limitation period. But that was more than six years after the Time of Sale of his first purchase, so I do not think it was unfair or unreasonable of the Lender to not uphold his claim relating to that purchase.

However, that is not an end to the matter as misrepresentations made at the Time of Sale can still give rise to an unfair credit relationship, even if the limitation period to make a freestanding claim has passed (see Scotland and Reast v. British Credit Trust Limited [2014] EWCA Civ 790). So although I think it was fair for the Lender to reject Mr G's claim under Section 75 of the CCA relating to his first purchase, I will consider the substance of the alleged misrepresentations here in relation to both of his purchases.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Times of Sale because Mr G 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 Fractional Club 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 representatives 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 Fractional Club membership was misrepresented at the Times of Sale for one or both of those reasons, I don't think it's probable. They're given little to none of the colour or context necessary to demonstrating 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 Fractional Club membership was misrepresented for these reasons, I don't think it was.

So, while I recognise that Mr G - and the PR - have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claims 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 I don't think the Lender acted unreasonably or unfairly by not upholding these particular Section 75 claims.

Section 140A of the CCA: did the Lender participate in one or more unfair credit relationships?

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Times 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.

As Mr G made his complaint to the Lender more than six years after the Time of Sale of his first purchase, there is a possibility that his complaint about the Lender's participation in an unfair credit relationship under Credit Agreement 1 could have made too late under the time limits set out under DISP 2.8.2 (2) R, if he settled Credit Agreement 1 more than six years before he complained. But from everything provided to us in this complaint, I haven't seen anything to suggest this part of Mr G's complaint has been made too late.

Having considered the entirety of the credit relationships between Mr G and the Lender along with all of the circumstances of the complaint, I don't think the credit relationships between them were 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 Times of Sale along with any relevant training material;*

2. *The provision of information by the Supplier at the Times of Sale, including the contractual documentation and disclaimers made by the Supplier;*

3. *The commission arrangements between the Lender and the Supplier at the Times of Sale and the disclosure of those arrangements;*

4. *Evidence provided by both parties on what was likely to have been said and/or done at the Times of Sale;*

5. *The inherent probabilities of the sale given its circumstances; and, when relevant*

6. *Any existing unfairness from a related credit agreement.*

I have then considered the impact of these on the fairness of the credit relationships between Mr G and the Lender.

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

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

The PR says that the right checks weren't carried out before the Lender lent to Mr G. I have not seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr G was actually unaffordable before also concluding that he lost out as a result, and then consider whether the credit relationship with the Lender was unfair to him for this reason. But from the information provided, I'm not satisfied that the lending was unaffordable for Mr G.

Connected to this is the suggestion by the PR that the person(s) the Credit Agreements were arranged by were self-employed and unauthorised to broker credit in their own right, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreements. However, it looks to me like Mr G 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 Fractional Club membership. And as the lending doesn't look like it was unaffordable for him, even if the Credit Agreements were arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mr G experiencing a financial loss – such that I can say that the credit relationships in question were 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 Agreements. But as I can't see that any such terms were operated unfairly against Mr G 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 Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

I acknowledge that Mr G may have felt weary after sales processes that went on for a long time. But he says little about what was said and/or done by the Supplier during their sales presentations that made him feel as if he had no choice but to purchase Fractional Club membership when he simply did not want to. He was also likely given a 14-day cooling off period and he 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 G made the decisions to purchase Fractional Club membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr G's credit relationships with the Lender were 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 relationships with the Lender were unfair to him. And that's the suggestion that Fractional Club 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

Shares in the Allocated Properties clearly constituted investments as they offered Mr G the prospect of a financial return – whether or not, like all investments, that turned out to be more than what he first put into it. But it's important to note at this stage that 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 does not prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr G as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to him as an investment, i.e. told him or led him to believe that Fractional Club membership offered him the prospect of a financial gain (i.e. a profit) given the facts and circumstances of this complaint.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Times 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 Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr G, the financial value of their share in the net sales proceeds of the Allocated Properties along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge the Supplier's sales process left open the possibility that the sales representative(s) may have positioned Fractional Club membership as an investment. So, I accept it's also possible that Fractional Club membership was marketed and sold to Mr G 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'll 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.

Would the credit relationship between the Lender and Mr G have been rendered unfair to him had there been a breach of Regulation 14(3) of the Timeshare Regulations?

Having found it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Times of Sale, I now need to consider what impact that breach had on the fairness of the credit relationships between Mr G and the Lender under the Credit Agreements and related Purchase Agreements, 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'm to conclude that a breach of Regulation 14(3) led to credit relationships between Mr G and the Lender that were 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 Agreements and the Credit Agreements is an important consideration.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mr G decided to go ahead with his purchases.

Mr G said in a witness statement provided to us by the PR that:

> *"I can confirm that as part of the sales process with [the Supplier] and upgrading to fractional ownership, the benefits were given as follows:*
>
> *We would benefit from the same unit with the same weeks each year, or biannually as sold. That the contract would be a fixed term of 17 years after which the property would be sold and the proceeds plus profit would be returned to fractional owners.*
>
> *([The Supplier] compared it to the UK property market where prices could double in that time period)"*

Mr G's recollections of the Times of Sale clearly include that the Supplier highlighted the possibility of making a profit from the sales of the Allocated Properties. But keeping in mind all the circumstances of Mr G's purchases, I do not think it inevitably follows that is what motivated him to go ahead with his purchases.

Mr G's recollections are of no more than how the Supplier described the benefits of Fractional Club membership to him. They do not make out what it was that the Supplier told him about membership that induced him into going ahead with his purchases. In the context of the assertion that the prospect of a financial gain from membership was an important and motivating factor behind his purchases, I find the absence of any comments from Mr G to that effect difficult to understand.

That does not mean he was not interested in a share in the Allocated Properties. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr G himself does not persuade me that his purchases were motivated by his shares in the Allocated Properties and the possibility of a profit, I do not think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decisions he ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I'm not persuaded that Mr G's decisions to purchase Fractional Club membership at the Times of Sale were motivated by the prospect of a financial gain (i.e. a profit). And for that reason, I do not think the credit relationship between Mr G and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

The Provision of Information by the Supplier at the Times of Sale

The PR says that a payment of commission from the Lender to the Supplier at the Times of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Times 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 DISP 3.6.4 R.

But I don't think Hopcraft, Johnson and Wrench assists Mr G 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 G. Nor have I seen anything that persuades me the commission arrangement between them gave the Supplier a choice over the interest rate that led Mr G into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Times 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 Times 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 relationships in question were unfair to Mr G.

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 Agreements that Mr G entered into wasn't high. Under each Credit Agreement it was no more than 2.5% of the amount borrowed, and even less than that (2.32%) as a proportion of the charge for credit. So, had he known at the Times 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 G 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 timeshares he wanted doesn't strike me as disproportionate. So, I think he would still have taken out the loans to fund his purchases at the Times 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 Agreements. And as it wasn't acting as an agent of Mr G but as the supplier of contractual rights he obtained under the Purchase Agreements, the transactions don't strike me as ones with features that suggest the Supplier had an obligation of 'loyalty' to him when arranging the Credit Agreements, 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 relationships unfair to Mr G.

Section 140A: 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 G and the Lender under the Credit Agreements and related Purchase Agreements were 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 found that Mr G's credit relationships with the Lender weren'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 G's complaint about unfair credit relationships. 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 G (i.e. secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the Times 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 G a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to him. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Times of Sale insofar as it was relevant to disclosing the commission arrangements between itself and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint. That's because, for the reasons I also set out above, I think he would still have taken out the loans to fund his purchases at the Times of Sale had there been more adequate disclosure of the commission arrangements that applied at those times."

In conclusion, given the facts and circumstances of this complaint, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mr G's Section 75 claims, and I was not persuaded that the Lender was party to credit relationships with him under the Credit Agreements that were 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.

I gave both parties the opportunity to respond to the PD. The PR responded stating it did not accept the PD, and it provided some further comments and evidence it wished to be considered. The Lender confirmed it accepted the PD and had nothing further to add.

As the parties have now had the opportunity to respond to the PD, and having received the responses I mentioned above, I'm now finalising my decision on this complaint.

What I've decided – and why

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

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

Again, my role as an Ombudsman is not to address every single point which has been made to date, but to decide what's fair and reasonable in the circumstances of this complaint. If I have not commented on, or referred to, something that either party has said, this does not mean I have not 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 relationships between Mr G and the Lender were unfair to him. In particular, the PR has provided further comments in relation to whether the memberships were sold to him as investments at the Times of Sale.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But it didn't make any substantially new comments in relation to all of those points in its response to my PD. Indeed, it hasn't said it disagrees with any of my provisional conclusions in relation to those other points. Since I have not 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 its 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

As I explained in my PD, while Mr G's recollections of the Times of Sale included that the Supplier highlighted the possibility of making a profit from the sales of the Allocated Properties, I did not think it inevitably followed that is what motivated him to go ahead with his purchases. And I did not find his recollections made out what it was that the Supplier told him about membership that induced him into going ahead with his purchases. So, I wasn't persuaded by the evidence before me that Mr G's purchases of Fractional Club membership were in whole or in part down to any breach of Regulation 14(3).

The PR argues, in summary, that the statements Mr G has recalled the Supplier making to him about benefitting from the future sales of the Allocated Properties are inherently persuasive and as such, he clearly stated the benefits that *"obviously convinced"* him to make his purchases.

I have thought carefully about what the PR has said but I'm not persuaded to depart from my provisional conclusions. I set out in my PD that to uphold Mr G's complaint because of a breach of Regulation 14(3), I would have to be persuaded that any breach, if it did occur, led him to enter into the Purchase Agreements and Credit Agreements. I still do not think it's inevitable that Mr G was led into those agreements by statements made to him by the Supplier about the possibility of a profit as the PR appears to be suggesting. And having carefully considered his recollections alongside what the PR has said, I remain unpersuaded that any breach of Regulation 14(3) was material to his purchasing decisions.

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 G's purchasing decisions.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*[1], 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 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) (which I still make no finding on here), I'm not persuaded Mr G's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationships between him and the Lender were unfair to him for this reason.

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 relationships between Mr G and the Lender under the Credit Agreements and related Purchase Agreements were unfair to him. So, I don't think it's fair or reasonable that I uphold this complaint on that basis.

Overall 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 G's Section 75 claims, and I'm not persuaded that the Lender was party to credit relationships with him under the Credit Agreements that were 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.

[1] *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 & BPF v FOS*').

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 13 March 2026.

Asa Burnett
Ombudsman