

The complaint

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

Background to the Complaint

Mr B, together with a third party I'll refer to as Miss M, purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 21 April 2016 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,500 fractional points for use on a bi-annual basis, at a cost of £12,989 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr B and Miss M more than just holiday rights. It also included a share in the net sale proceeds of a property named on their Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr B and Miss M paid for their Fractional Club membership by taking finance of £12,989 from BPF in Mr B's sole name (the 'Credit Agreement'). As the loan was taken in Mr B's name, he alone is eligible to refer this complaint to us. And so for ease, I'll refer only to Mr B from this point on – even where he and Miss M may have been acting jointly, or the matter might otherwise apply to her in some way.

Mr B – using a professional representative (the 'PR') – wrote to BPF on 20 February 2024 (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.

As BPF didn't respond to Mr B's complaint, it was referred to the Financial Ombudsman Service. One of our Investigators reviewed the complaint and did not recommend that it be upheld.

Mr B disagreed with the Investigator's assessment and asked for an Ombudsman's decision, so it was passed to me.

My provisional decision

On initial review, I thought Mr B's complaint should be upheld. As that represented a departure from our Investigator's view, I wrote to both parties with a provisional decision to let them know what I thought and invite any final submissions they wished to make. I said:

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I 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 Mr B as an investment, which, in the circumstances of this complaint, rendered the credit relationship between him and BPF unfair to him 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 this complaint, it is not necessary to make formal findings on all of them because, even if one or more of those aspects ought to succeed, the redress I am currently proposing puts Mr B in the same or a better position than he would otherwise be in.

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

Having considered the entirety of the credit relationship between BPF and BPF 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;
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; and
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 Mr B and BPF.

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

BPF does not dispute, and I am satisfied, that Mr B'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 Mr B says that the Supplier did exactly that at the Time of Sale – saying, in summary, that he was told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

Mr B's share in the Allocated Property clearly constituted an investment as it offered him the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But it is important to note at this stage that the fact that 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 Mr B 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 evidence in this complaint 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 B, the financial value of his 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, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr B as an investment.

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. And for reasons I'll now come on to, given the facts and circumstances of this complaint, I think the Supplier is likely to have breached Regulation 14(3) of the Timeshare Regulations.

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 – including:

1. a document called the 2013/2014 Sales Induction Training (the '2013/2014 Induction Training');
2. screenshots of a Electronic Sales Aid (the 'ESA'); and
3. a document called the "FPOC2 Fly Buy Induction Training Manual" (the 'Fractional Club Training Manual')


Neither the 2013/2014 Induction Training nor the ESA I've seen included notes of any kind. However, the Fractional Club Training Manual includes very similar slides to those used in the ESA. And according to the Supplier, the Fractional Club Training Manual (or something similar) was used by it to train its sales representatives at the Time of Sale. So, it seems to me that the Training Manual is reasonably indicative of:

1. the training the Supplier's sales representatives would have got before selling Fractional Club membership; and
2. how the sales representatives would have framed the Supplier's multimedia presentation (i.e., the ESA) during the sale of Fractional Club membership to prospective members – including Mr B.

The "Game Plan" on page 23 of the Fractional Club Training Manual indicates that, of the first 12 to 25 minutes, most of that time would have been spent taking prospective members through a comparison between "renting" and "owning" along with how

membership of the Fractional Club worked and what it was intended to achieve.

Page 32 of the Fractional Club Training Manual covered how the Supplier's sales representatives should address that comparison in more detail – indicating that they would have tried to demonstrate that there were financial advantages to owning property, over 10 years for example, rather than renting:



The image shows two side-by-side comparison charts. Each chart has a 'Rent' column and an 'Own' column. The 'Rent' column lists: Monthly Rent £ 500, 12 months £ 6000, After 10 years £ 60000. The 'Own' column lists: Mortgage £ 500, 12 months £ 6000, After 10 years £ 60000. A central question asks 'Would you still OWN?'. Below the charts is a green sign with 'Rent' and 'Own' arrows and the text 'Rent Own'. The right chart has a different 'Own' column: Mortgage £ 800, 12 months £ 9600, After 10 years £ 96000.

- Re-visit the idea of renting a house and talk them through the example of renting a home for £500 highlighting the fact of no return
- Refer to their decision to purchase a property as it made more financial sense to own than rent because, not only are they are building equity in their property, they can also continue to enjoy living in their home once it is paid for
- Ask: "if it cost a little more to own rather than rent would they be happy to pay the extra to own?" (*Increase amount of owning and continue to do this for a couple of times until they don't agree.*)

CLOSE: So what you are telling me is that, as long as it's comfortably affordable, you would always choose to own rather than rent, is that correct?

LINK: Now let me show you the relevance this has when it comes to your holidays because what you are currently doing is ...

CLOSE:

Indeed, one of the advantages of ownership referred to in the slide above is that it makes more financial sense than renting because owners "are building equity in their property". And as an owner's equity in their property is built over time as the value of the asset increases relative to the size of the mortgage secured against it, one of the advantages of ownership over renting was portrayed in terms that played on the opportunity ownership gave prospective members of the Fractional Club to accumulate wealth over time.

I acknowledge that the slides don't include express reference to the "investment" benefit of ownership. But the description alludes to much the same concept. It was simply rephrased in the language of "building equity". And with that being the case, it seems to me that the approach to marketing Fractional Club membership was to strongly imply that 'owning' fractional points was a way of building wealth over time, similar to home ownership.

Page 33 of the Fractional Club Training Manual then moved the Supplier's sales representatives onto a cost comparison between "renting" holidays and "owning" them. Sales representatives were told to ask prospective members to tell them what they'd own if they just paid for holidays every year in contrast to spending the same amount

of money to “own” their holidays – thus laying the groundwork necessary to demonstrating the advantages of Fractional Club membership:

- You are currently spending £xxxx on your holidays each year... (taken from survey)
- Confirm exactly what clients get for that money in terms of quality, people travelling and weeks
- Confirm the client will holiday for the next 10 years
- Explain total cost, with no inflation over a ten year period and ask what they own at the end of that period
- Compare spending the same money to own your holidays with better benefits, so that at the end of the ten years they would have received better value

✍️ **CLOSE:** So, looking at the two options which way makes more sense, to own or rent your holidays? (Get the answer “Owning”) This is why so many people choose to holiday with ~~Conrad Hotels~~.

✍️ **LINK:** Before I show you how the product works, I am just going to tell you how ~~Conrad Hotels~~ started and where we are today.

CLOSE:

With the groundwork laid, sales representatives were then taken to the part of the ESA that explained how Fractional Club membership worked. And, on pages 41 and 42 of the Fractional Club Training Manual, this is what sales representatives were told to say to prospective members when explaining what a ‘fraction’ was:

*“FPOC = small piece of [...] World apartment which equals **ownership of bricks and mortar** [...] Major benefit is the property is sold in nineteen years (**optimum period to cover peaks and troughs in the market**) when sold you will get your share of the proceeds of the sale*

SUMMARISE LAST SLIDE:

FPOC equals a passport to fantastic holidays for 19 years with a return at the end of that period. When was the last time you went on holiday and got some money back? How would you feel if there was an opportunity of doing that?

[...]

*LINK: Many people join us every day and one of the main questions they have is “**how can we be sure our interests are taken care of for the full 19 years?**” As it is very important you understand how we ensure that, I am going to ask Paul to come over and explain this in more details for you.*

[...]

*“Handover: (Manager’s name) John and Mary love FPOC and have told me the best for them is.....**Would you mind explaining to them how their interest will be protected over the next 19 year[s]?”***

(My emphasis added)

The Fractional Club Training Manual doesn’t give any immediate context to what the manager would have said to prospective members in answer to the question posed by the sales representative at the handover. Page 43 of the manual has the word “script” on it but otherwise it’s blank. However, after the Manual covered areas like the types of holiday and accommodation on offer to members, it went onto “resort management”, at which point page 61 said this:

“T/O will explain slides emphasising that they only pay a fraction of maintaining the entire property. It also ensures property is kept in peak condition to maximise the return in 19 years[.] time.

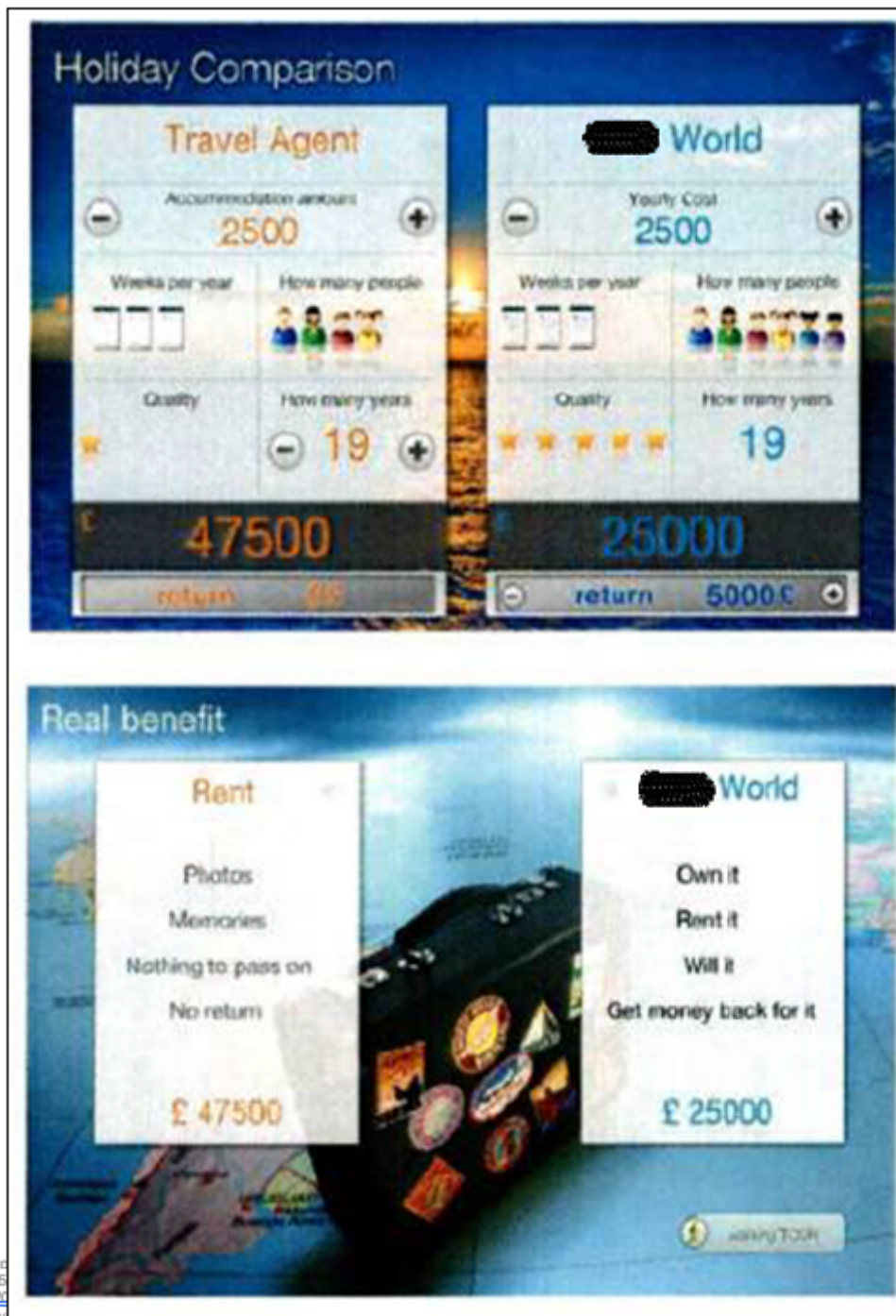
[...]

CLOSE: I am sure you will agree with us that this management fee is an extremely important part of the equation as it ensures the property is maintained in pristine condition so at the end of the 19 year period, when the property is sold, you can get the maximum return. So I take it, like our owners, there is nothing about the management fee that would stop you taking you holidays with us in the future?...”

(My emphasis added)

By page 68 of the Fractional Club Training Manual, sales representatives were moved on to the holiday budget of prospective members. Included in the ESA were a number of holiday comparisons. It isn’t entirely clear to me what the relevant parts of the ESA were designed to show prospective members. But it seems that prospective members would have been shown that there was the prospect of a “return”.

For example, on page 69 of the Fractional Club Induction Training Manual, it included the following screenshots of the ESA along with the context the Supplier’s sales representatives were told to give to them:



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[...]

“We also agreed that you would get nothing back from the travel agent at the end of this holiday period. Remember with your fraction at the end of the 19 year period, you will get some money back from the sale, so even if you only got a small part of your initial outlay, say £5,000 it would still be more than you would get renting your holidays from a travel agent, wouldn't it?”

I acknowledge that the slides above set out a “return” that is less than the total cost of the holidays and the “initial outlay”. But that was just an example and, given the way in which it was positioned in the Training Manual, the language did leave open the possibility that the return could be equal to if not more than the initial outlay.

Furthermore, the slides above represent Fractional Club membership as:

- (1) The right to receive holiday rights for 19 years whose market value significantly exceeds the costs to a Fractional Club member; plus
- (2) A significant financial return at the end of the membership term.

And to consumers (like Mr B) who were looking to buy holidays anyway, the comparison the slides make between the costs of Fractional Club membership and the higher cost of buying holidays on the open market was likely to have suggested to them that the financial return was in fact an overall profit.

I acknowledge that there may not have been a comparison between the expected level of financial return and the purchase price of Fractional Club membership. However, if I were to only concern myself with express efforts to quantify to Mr B the financial value of the proprietary interest he was offered, I think that would involve taking too narrow a view of the prohibition against marketing and selling timeshares as an investment in Regulation 14(3).

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)).’*¹ 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.

Given what I’ve already said about the Supplier’s training material and the way in which I think it was likely to have framed the sale of Fractional Club membership to prospective members (including Mr B), I think it is more likely than not that the Supplier did, at the very least, imply that future financial returns (in the sense of possible profits) from a Fractional Club Membership were a good reason to purchase it – which, broadly speaking, is consistent with Mr B’s recollections of the sale.

So, overall, on the balance of probabilities, I think the Supplier’s sales representative was likely to have led Mr B to believe that Fractional Club membership was an investment that may lead to a financial gain (i.e., a profit) in the future. And with that being the case, I do not find him either implausible or hard to believe when he says that he was told that he was buying shares in property that, being an investment, may well lead to a financial gain. On the contrary, given everything I have seen so far, I think that is likely to be what Mr B was led to believe by the Supplier at the relevant time. And for that reason, I think the Supplier breached Regulation 14(3) of the Timeshare Regulations.

¹ 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>

Was the credit relationship between BPF and Mr B 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 Mr B and BPF under the Credit Agreement and related Purchase Agreement as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr B and BPF that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

To help me decide this point, I've carefully considered what Mr B has said in the course of his complaint about how the membership was sold to him and his motivation for purchasing it. I've also borne in mind the broader circumstances surrounding the purchase.

When referring the complaint to us, the PR provided a copy of a statement in which Mr B sets out his recollections from the Time of Sale in his own words. I note that, of particular relevance to the point at issue, he says within this that:

"Words dismissing old-style timeshare were used & phrases of 'Fractional Owners' & 'Points' crept into his (the Supplier's sales representative's) conversation, but there was always the emphasis on us having A FRACTION OWNERSHIP OF AN ACTUAL PROPERTY AS WELL AS TWO ONE WEEK HOLIDAYS PER YEAR..."

...

It was explained that the fractional investment would increase in value (using the U.K. property market as an example) ...

...

It was stated that at the end of our contract the property would be sold on the open market & we would receive our money back & profit..."

I find Mr B's statement to persuasively set out both that the investment element of the Fractional Club membership was presented to him by the Supplier and a material factor in his decision to proceed with the purchase. That doesn't mean he was not interested in holidays. His own testimony demonstrates that he quite clearly was. And that is not surprising given the nature of the product at the centre of this complaint. But as Mr B says (plausibly in my view) that Fractional Club membership was marketed and sold to him at the Time of Sale as something that offered him more than just holiday rights and that this was a factor in his decision to purchase it, on the balance of probabilities, I think his purchase was motivated by his 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 the more 'standard' type of timeshare available to them. And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision he ultimately made.

Mr B has not said or suggested, for example, that he would have pressed ahead with the purchase in question had the Supplier not led him to believe that Fractional Club membership was an appealing investment opportunity. Such other evidence as there is does not lead me to think that Mr B had such a level of interest in the holiday options

available through the Supplier that he would always have proceeded but for the promotion of the membership as an investment opportunity. I note, amongst other things, that Mr B purchased a bi-annual membership rather than an annual one – which, while not definitive in and of itself, strikes me as further evidence that holidays were not the sole factor in his decision. And as he faced the prospect of borrowing and repaying a substantial sum of money while subjecting himself to long-term financial commitments, had he not been encouraged by the prospect of a financial gain from membership of the Fractional Club, I'm not persuaded that he would have pressed ahead with his purchase regardless.

In conclusion, I thought BPF participated in and perpetuated an unfair credit relationship with Mr B 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 thought it fair and reasonable that I uphold the complaint.

Having found that Mr B 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 BPF), and the impact of that breach meaning that, in my view, the relationship between BPF and Mr B was unfair under section 140A of the CCA, I thought it would be fair and reasonable to put him 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 B and Miss M agree to assign to BPF their Fractional Points or hold them on trust for BPF if that can be achieved.

I went on to set out a number of steps that I thought BPF would need to take to put Mr B back in the position he would have been in had he not purchased the Fractional Club membership.

The PR responded to my provisional decision to confirm Mr B's acceptance.

BPF responded to say that it did not accept my provisional decision, with some further comments for me to take into account.

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.

BPF's response was limited to one point, in which it set out its view that Mr B purchased the Fractional Club membership to pay less in maintenance charges and reduce the term of his loan and therefore the amount of interest he was paying. It cited Mr B's testimony, in which he said:

On one occasion they returned with paperwork with a deal on it. It was providing us with TWO one week holidays per year in April & September (we were told) with a finance deal over TEN YEARS. We both looked at the interest payable over the term & said No we would not contemplate that length of term nor that level of interest on anything. They disappeared again.

Upon returning it was announced they had an amazing deal for us. Someone else had sold back their purchase WHICH EMPHASIXED (sic) THE VALUE OF THE FRACTIONAL PRODUCT to CLC (due to personal circumstances) & therefore we had this fantastic opportunity to take over their deal. It was for 16 years as the previous owners had used 3 years & it was a bi-annual contract, thus the only thing that would change from what we'd previously discussed was that we would be paying the management fee every other year, not annually. We could all have the finance over 5 years, thus bringing the interest into a more acceptable range for us.

I do not agree with BPF's interpretation of Mr B's comments. On my reading of what he's said, he is comparing the cost of the deal initially proposed to fund the purchase in question. He was not comparing it with an existing membership or finance agreement.

With that in mind, and with no other comments or evidence for me to consider, I remain of the view that the Supplier's sale of the Fractional Club membership to Mr B as an investment was material to his decision to purchase it. It follows that I still think the Supplier's breach of Regulation 14(3) led to a credit relationship between Mr B and BPF that was unfair to him, and for which BPF needs to take action to put things right.

Putting things right

With no comments as to the redress I proposed in my provisional decision, I see no reason to suggest a different method of compensating Mr B. So here's what I am instructing BPF to do to put things right for Mr B:

- (1) BPF should refund Mr B'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), BPF should also refund the annual management charges Mr B paid as a result of Fractional Club membership.
- (3) BPF can deduct:
 - i. The value of any promotional giveaways that Mr B and Miss M used or took advantage of; and
 - ii. The market value of the holidays* Mr B and Miss M took using their Fractional Points.

(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 BPF settles this complaint.
- (5) BPF should remove any adverse information recorded on Mr B's credit file in connection with the Credit Agreement reported within six years of this decision.
- (6) If Mr B and Miss M's Fractional Club membership is still in place at the time of this decision, as long as they agree to hold the benefit of their interest in the Allocated Property for BPF (or assign it to BPF if that can be achieved), BPF must indemnify them against all ongoing liabilities as a result of their 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 Mr B and Miss 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 BPF to take off tax from this interest. If that's the case, BPF must give Mr B a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons I've explained, I uphold this complaint and require Clydesdale Financial Services Limited trading as Barclays Partner Finance to compensate Mr B in the manner described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 March 2026.

Ben Jennings
Ombudsman