

## **The complaint**

Mr D'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 D was the member of a timeshare provider (the 'Supplier') – having initially purchased a membership from it in May 2016. But the product at the centre of this complaint is his membership of a timeshare that I'll call the 'Fractional Club' – which he bought on 6 March 2017 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 1,240 fractional points at a cost of £5,960 after trading in his existing membership (the 'Purchase Agreement').

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

Mr D paid for his Fractional Club membership by taking finance of £20,636 from BPF (the 'Credit Agreement'), with some of the funds being used to settle the loan he'd taken from BPF to pay for his previous membership.

Mr D – using a professional representative (the 'PR') – wrote to BPF on 22 November 2023 (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.

BPF didn't respond to the complaint, so Mr D referred it to us. One of our Investigators reviewed the complaint and, having considered the information on file, did not recommend that it be upheld.

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

I considered the matter and issued a provisional decision (the 'PD'). In that decision, 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 do not 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 is to decide what is 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.

## **Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale**

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As both sides may already know, a claim against BPF under Section 75 essentially mirrors the claim Mr D could make against the Supplier. Certain conditions must be met if this protection is engaged – which are set out in the CCA. BPF does not dispute that the relevant conditions are met in this complaint, and I'm satisfied that they are.

There are, though, certain time limits that apply – and I think these mean Mr D's claim would've been time-barred.

The Limitation Act 1980 sets out limitation periods, or time limits, for bringing various types of legal claim. For a claim based on contract, it's not generally possible to start court action more than six years after the cause of action arose. If a claim is brought too late, the respondent is likely to have a complete defence to the claim on that basis.

For claims relating to misrepresentation, the time limit would typically be six years from the date the claimant suffers damage as a result of the misrepresentation. For example, entering into a contract – and incurring liabilities – when they would otherwise not have done.

Mr D's claim under Section 75 is that but for the Supplier's various alleged misrepresentations, he wouldn't have entered into the Purchase Agreement (and, therefore, the Credit Agreement). So it is the date on which he entered into those agreements that his cause of action arose, meaning he had six years from that date within which to bring this claim.

Mr D entered into the Purchase Agreement and Credit Agreement on 6 March 2017. He raised his claim under Section 75 within the Letter of Complaint dated 22 November 2023 – more than six years later.

That being the case, I don't think there is any basis on which I could reasonably require BPF to take any action in respect of this claim.

However, I have later considered whether these alleged misrepresentations could have been something that caused any unfairness in Mr D's credit relationship with BPF.

## **Section 75 of the CCA: the Supplier's Breach of Contract**

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I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, BPF is also liable.

I've gone on to consider whether there would be any additional time within which Mr D could raise a claim under Section 75 for breach of contract, given that his cause of action may have accrued in a different way and therefore at a different point in time.

While not explicitly referenced as such in the Letter of Complaint, some of Mr D's points could reasonably be interpreted as an allegation of a breach of contract by the Supplier. Most notably, that he could not access the holidays that he was led to believe would be available through the membership. On my reading of the complaint, Mr D considers that the Supplier was not living up to its end of the bargain and had breached the Purchase Agreement. His cause of action would therefore accrue when

any such breach occurred, i.e. when he was unable to holiday, either when or where he wanted.

Mr D has not provided us with the dates of any attempts to book holidays through the membership at the centre of this complaint that ended up falling short of his expectations. So it is hard for me to ascertain when his cause of action arose. But even accepting that this claim was made in time, which is possible given the relevant dates here, I don't think it would've been unreasonable for BPF to decline it.

I say this because the evidence I've seen so far doesn't persuade me that the Supplier breached the terms of the Purchase Agreement. In addition to the vague nature of the allegations as I've described above, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork signed by Mr D states that the availability of holidays was subject to demand. I can see that he was able to utilise the membership to book holidays each year since his purchase, prior to the complaint being raised (with the exception of 2021, a consequence of the Covid-19 pandemic). Even if I accept that he may not have been able to take certain holidays, I don't think this necessarily amounts to a breach of the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think BPF is liable to pay Mr D any compensation for a breach of contract by the Supplier. And with that being the case, I do not think BPF acted unfairly or unreasonably in relation to this aspect of the complaint either.

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

Having considered the entirety of the credit relationship between Mr D and BPF along with all of the circumstances of the complaint, I don't 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 standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Time of Sale in relation to Fractional Club membership, including the contractual documentation and disclaimers made by the Supplier;
3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
4. The inherent probabilities of the sale given its circumstances; and, when relevant
5. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationship between Mr D and BPF given his circumstances at the Time of Sale.

#### **The Supplier's sales & marketing practices at the Time of Sale**

I have firstly considered whether the misrepresentations Mr D alleges were made by the Supplier in the context of his Section 75 claim could have caused any unfairness for the purposes of Section 140A.

In the Letter of Complaint, the PR said that the Fractional Club membership was misrepresented by the Supplier as an investment, through which Mr D would have a share of a property that would increase in value. As I'll come on to in more detail

below, I consider that the acquisition of a share in the Allocated Property did amount to an investment – as it offered the prospect of a financial return. Presenting the timeshare as an investment would not, therefore, have amounted to a misrepresentation – albeit there are other considerations when it comes to the marketing and selling of a timeshare contract as an investment that I explore below.

The amount of money Mr D receives on his investment will only be known after the membership term ends, when the Allocated Property is sold. So even if I were to accept that any such comments were made by the Supplier in this regard (and I make no firm finding on that), I cannot say they would amount to a misrepresentation as there is no evidence that this was not simply the salesperson's honestly held opinion.

The Letter of Complaint also stated that Mr D was led believe that he "*would have access to the holiday apartments at any time all around the year*". I understand this to mean that Mr D thought he would be able to stay at the Allocated Property whenever he wanted, which was not the case. The Purchase Agreement that Mr D signed explained this clearly. I find it unlikely that the Supplier would've made promises of the type suggested in the Letter of Complaint.

So, while I recognise that Mr D and the PR have concerns about the way in which Fractional Club membership was sold by the Supplier, I do not think this caused any unfairness in Mr D's credit relationship with BPF such that it warrants a remedy.

Turning to the points specifically raised in relation to the potential unfairness of the relationship between Mr D and BPF, the PR said in the Letter of Complaint that the right checks weren't carried out before BPF lent to Mr D. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that BPF 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 D was actually unaffordable before also concluding that he lost out as a result and then consider whether the credit relationship with BPF was unfair to him for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr D.

Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that BPF wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr D 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 Agreement was 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 D suffering a financial loss, such that I can say that the credit relationship in question was 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 BPF to compensate him, even if the loan wasn't arranged properly.

The PR also says that Mr D was rushed into signing the contractual paperwork at the end of a long sales meeting, without having sufficient time to properly consider the implications of the agreement into which he was entering. I acknowledge and appreciate that Mr D may have felt weary after a sales process that went on for a long time. But he has said little about what was said and/or done by the Supplier during the sales presentation 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 given a 14-day cooling off period and he has not provided a credible explanation for why he did

not cancel the membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr D made the decision to purchase Fractional Club membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

The PR has also suggested that one or more of the contract terms in the Purchase Agreement are unfair. But as I can't see that any such terms were operated unfairly against Mr D 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.

Overall, therefore, I don't think that Mr D's credit relationship with BPF was rendered unfair to him under Section 140A for any of the reasons above. And that includes whether any of these matters may have arisen in respect of Mr D's prior credit relationship with BPF, given that loan was consolidated within the Credit Agreement at the centre of this complaint. But there is another reason, perhaps the main reason, why the PR says the credit relationship with BPF was unfair to him. And that's the suggestion that Fractional Club membership was marketed and sold to him as an investment in breach of prohibition against selling timeshares in that way.

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

BPF does not dispute, and I am satisfied, that Mr D'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 the PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mr D 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.

A share in the Allocated Property clearly constituted an investment as it offered Mr D 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 D 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 Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is 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 D, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr D 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 will 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 BPF and Mr D have been rendered unfair to him had there been a breach of Regulation 14(3) of the Timeshare Regulations?

Having found that it was possible 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 D 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 me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr D 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 D has said in the course of his complaint about how the membership was sold to him and his motivation for purchasing it.

I would note first of all that the evidence in this respect is quite limited. Within the Letter of Complaint, it is said that Mr D was told that she had purchased an investment that would increase in value. There was no further detail underpinning these statements within the Letter of Complaint, which are rather generic in nature. In fact, such assertions have been made in an identical fashion by the PR in a number of other complaints.

When referring the complaint to us, the PR included a statement from Mr D with his recollections from the Time of Sale and, in response to our Investigator's assessment, highlighted that within this he said:

*"They (the Supplier's sales representative) said that after 15 years of the accommodation being built that they would sell it, and then split what profits there were between all the people that had bought that property then the timeshare would end."*

PR2 says that this extract demonstrates that the Supplier promoted the investment element of the membership to Mr D. There is little detail underpinning Mr D's comments here, but accepting them at face value I agree that they support the allegation that the Supplier marketed the membership as an investment opportunity. As set out above, this is a possibility I have already accepted. In order to uphold the complaint, though, I would need to find that such a positioning of the membership was material to Mr D's decision to purchase it. And his comments do not lead me to think that it was.

Mr D's statement as a whole is very brief – covering his history of purchases with the Supplier in just 400 words. He says very little in any explicit terms about his motivation to purchase either the Fractional Club membership or the one that preceded it (the sale of which, to be clear, I have also considered given it was funded by a related credit agreement). But what he has said – and with consideration of the broader circumstances at the time of each sale – leads me to think that Mr D would always have proceeded to purchase the memberships whether or not they were promoted to him as an investment opportunity.

The thrust of Mr D's statement speaks, to my mind, of his interest in the holiday options that Fractional Club membership offered. When speaking of his initial purchase – which was also an asset-backed fractional membership, he says:

*"... once they done the presentation was taken to look at what I could get as an accommodation to stay in was took to Monterrey as was blown away, so I purchased 1 (sic)."*

He makes no mention of the investment element of the first membership whatsoever, so I can only assume that it was of no (or very limited) appeal to him.

And of the Fractional Club membership at the centre of this complaint, he went on to say:

*"[the Supplier's sales representative] told me the 1 I had was not really good enough for me then went through the process, gave me lots more incentives with upgrades 2 for ones..."*

When trading in his first membership towards the second, Mr D increased his holding of fractional points from 900 to 1,240 – and from one to two weeks. I think this was a significant factor in Mr D's decision to proceed with this purchase, and one that he would always have opted for whether or not the Supplier promoted the membership to him as an investment opportunity. He makes only passing reference to the possibility of a profit being mentioned by the Supplier, such that it does not appear material to his decision. I also note that he was increasing his investment (doubling his share) by upgrading in the manner he did – but again makes no reference to this, as I might expect if this had been something he was motivated by.

That is not to say that Mr D was not interested in a share in the Allocated Property at all. That wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr D himself doesn't persuade me that his purchase was motivated by a share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decisions Mr D 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 am not persuaded that Mr D's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests he would have pressed ahead with the purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr D and BPF was unfair to him even if the Supplier breached Regulation 14(3).

#### The Provision of Information by the Supplier at the Time of Sale

The PR says that a payment of commission from BPF to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time 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 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 D in arguing that his credit relationship with BPF 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 BPF and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr D, 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 D into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that BPF 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 BPF 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 D.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by BPF to the Supplier for arranging the Credit Agreement that Mr D entered into wasn't high. At £515.90, it was only 2.50% 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 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 D 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 D 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 BPF were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr D.

#### 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 D and BPF under the Credit Agreement and related Purchase Agreement was 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**

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While I've found that Mr D credit relationship with BPF 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 D'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 BPF is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from BPF without telling Mr D (i.e., secretly). And the second relates to BPF'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 D 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 BPF 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 BPF's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think he 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.

In conclusion, given the facts and circumstances of this complaint, I did not think there was any basis on which I could direct BPF to take any action in response to Mr D's Section 75 claim, and I was not persuaded that BPF 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 BPF to compensate him.

BPF responded to the PD and accepted it.

The PR also responded. It did not accept the PD and provided some further comments it wanted me to take into account.

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.

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 only relate to the issue of whether the credit relationship between Mr D and BPF was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr D as an investment at the Time 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 further comments in relation to those in their response to my PD. Indeed, it hasn't said it disagrees 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 BPF participate in an unfair credit relationship?**

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The PR has highlighted under Section 140B (9) of the CCA, the burden of proof falls on BPF to disprove the allegation that its relationship with Mr D was unfair. I agree that this is correct, placing a burden on lenders during the process of litigation. That does not mean, though, that BPF – or I – should take a claim at face value. There remains an onus on Mr D to provide some evidence for the claim he is making, despite the overall burden of proof resting with BPF, as was set out in the judgment in *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34 at paragraph 40. I also remind both parties that it is my role to make findings on what I consider to be fair and reasonable in all the circumstances of any given complaint.

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

In its response to my PD, the PR has reasserted its view that the Supplier marketed the Fractional Club membership to Mr D as an investment and that this was a motivating factor in his decision.

I accepted in my PD that the membership may well have been marketed as an investment to Mr D in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. I also explained that while the Supplier's sales processes left open the possibility that the sales representative may have positioned Fractional Club membership as an investment, it wasn't necessary for me to make a finding on this as it is not determinative of the outcome of the complaint. I explained that regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. The PR's response to my PD hasn't changed my view of this, and so whether the Supplier's breach of Regulation 14(3) led Mr D to enter into the Purchase Agreement and the Credit Agreement remains an important consideration.

On a related note, then, is the PR's point that the "unit share" Mr D was acquiring was specifically recorded within the pricing sheet completed by the Supplier. It argues that this evidences that the investment element "played quite an important role in convincing" Mr D to purchase the membership. I do not agree with that. As above, I accept that the investment element may well have been promoted to Mr D by the Supplier. But the recording of the unit share within the Supplier's paperwork does not, to my mind, say any more about the part this played in Mr D's decision-making.

In my PD I explained the reasons why I didn't think any breach of Regulation 14(3) had led Mr D to proceed with his purchase. In short, I was not persuaded that his decision was motivated by the prospect of a financial gain (i.e., a profit). In reaching that view, I took into account the testimony given by Mr D in the course of his complaint. I recognise the PR has interpreted Mr D's testimony differently to how I have, and I have carefully considered its further comments. Ultimately though, they have not led me to a different conclusion.

The PR objects to the approach I've taken in assessing this aspect of the complaint, believing that I have detracted from the judgment in *Shawbrook & BPF v FOS*<sup>1</sup> and the case law that contributed to it, by requiring Mr D to have been "primarily or mainly motivated" by the investment element in order to uphold the complaint. But I did not make such a finding. I said that, in my view, Mr D was highly motivated by the holiday options offered by the Supplier – which was a factor in my overall conclusion in light of all the available evidence that he would, on balance, have pressed ahead with his purchase of the Fractional Club membership even if there had been a breach of Regulation 14(3).

So for the reasons given in my PD and above, I still do not think that any breach of Regulation 14(3), if there was one, was material to Mr D's decision to purchase the Fractional Club membership.

#### 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 D and BPF 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.

#### **Conclusion**

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In conclusion, given the facts and circumstances of this complaint, I do not think that BPF needs to take any action in response to Mr D's Section 75 claim, and I am not persuaded that BPF 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 BPF to compensate him.

#### **My final decision**

For the reasons set out above, I don't uphold this complaint.

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

Ben Jennings  
**Ombudsman**

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<sup>1</sup> 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').