

The complaint

Ms L's complaint is, in essence, that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with her 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.

What happened

Ms L was the member 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 her membership of a timeshare that I'll call the 'Fractional Club' – which she bought on 4 July 2017 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 3,640 fractional points at a cost of £6,351 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Ms L 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 her membership term ends.

Ms L paid for her Fractional Club membership by taking finance of £6,351 from the Lender (the 'Credit Agreement').

Ms L – using a professional representative (the 'PR') – wrote to the Lender on 31 March 2023 (the 'Letter of Complaint') to raise a number of different concerns. Since then the PR has raised some further matters it says are relevant to this outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

Ms L ultimately referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Ms L disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I considered the matter and issued a provisional decision (the 'PD'). In that decision, I said:

'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 provisionally decided – and why

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

Having done 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 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

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. Section 75(3)(b) says this protection does not apply if:

'the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000.'

In this case we have the pricing sheet from this purchase which shows the purchase price of the membership as being £41,171. Accordingly, the misrepresentation claim under Section 75 of the CCA isn't within the financial limits set by the CCA. And so, any Section 75 claim made to the Lender cannot be successful as liability does not attach to the Lender for any misrepresentations by the Supplier under this provision.

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

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

Having considered the entirety of the credit relationship between Ms L and the Lender 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, including the contractual documentation and disclaimers made by the Supplier;*
- 3. The commission arrangements between the Lender and the Supplier at the Time 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 Time of Sale;*
- 5. The inherent probabilities of the sale given its circumstances; and*
- 6. Any existing unfairness from a related credit agreement.*

I have then considered the impact of these on the fairness of the credit relationship between Ms L and the Lender given her circumstances at the Time of Sale.

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

Ms L's complaint about the Lender being party to an unfair credit relationship was and is made for several reasons.

They include, allegations that:

- 1. Ms L was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.*
- 2. the right checks weren't carried out before the Lender lent to Ms L.*

However, as things currently stand, none of these strike me as reasons why this complaint should succeed.

I acknowledge that Ms L may have felt weary after a sales process that went on for a long time. But she says little about what was said and/or done by the Supplier during her sales presentation that made her feel as if she had no choice but to purchase Fractional Club membership when she simply did not want to. She was also given a 14-day cooling off period and she has not provided a credible explanation for why she did not cancel her membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Ms L made the decision to purchase Fractional Club membership because her ability to exercise that choice was significantly impaired by pressure from the Supplier.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's 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 Ms L was actually unaffordable before also

concluding that she lost out as a result and then consider whether the credit relationship with the Lender was unfair to her for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Ms L.

Overall, therefore, I don't think that Ms L's credit relationship with the Lender was rendered unfair to her under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR now says the credit relationship with the Lender was unfair to her. And that's the suggestion that Fractional Club membership was marketed and sold to her 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

The Lender does not dispute, and I am satisfied, that Ms L'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 Ms L 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 Ms L the prospect of a financial return – whether or not, like all investments, that was more than what she 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.¹

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 Ms L 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 her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

¹ The PR has argued that Fractional Club membership amounted to an Unregulated Collective Investment Scheme, however this was considered and rejected in the judgment in *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).

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 Ms L, 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 Ms L 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.

Was the credit relationship between the Lender and Ms L rendered unfair?

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 Ms L and the Lender 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 Ms L and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her to enter into the Purchase Agreement and the Credit Agreement 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 Ms L decided to go ahead with her purchase. I say that having considered the available testimony in the form of a typed statement, which is unsigned and undated and appears to be from Ms L. The statement was provided to this service in January 2024, but I can't say on balance when it was made. The statement includes the following:

'In 2017 I took out my last loan... to change my investment to a smaller Timeshare... as I was old [sic] it was a better investment.

...

I was sold the Fractional points investment scheme and my previous scheme under the impression that members come first, but clearly this was not the case as I found out. When I arrived at the resort, I said to them that I was a member and all I got was a free safe key!

While the suggestion from the PR is that Ms L agreed to purchase Fractional Club membership as an investment, I don't consider that the evidence above indicates that she did so for financial gain or profit. Rather Ms L indicated that she was hopeful of improved

holiday rights.

In May 2025 the PR provided copy handwritten notes, dated 30 June 2022, purportedly made during or following a call with Ms L. Like the written statement, the call notes reference the prospect of the 'investment being better' but do not suggest that there was any expectation of a profit or similar or that this was a motivating factor for her.

So, while these documents might suggest the Fractional Club was sold as an investment, I find it difficult to read into them that Ms L had any expectation of making a profit on her initial outlay. It's reasonable to think that, if Ms L did recall this as an important feature of the sale, then this would have made its way into her recollection of events.

That doesn't mean Ms L wasn't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Ms L herself doesn't persuade me that her purchase was motivated by her 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 decision she 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 Ms L'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 she would have pressed ahead with her 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 Ms L and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

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

The PR suggests that Ms L was not given sufficient information at the Time of Sale by the Supplier about membership, including about the ongoing costs of Fractional Club membership and the fact that Ms L's heirs could inherit these costs.

As I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I acknowledge that it is also possible that the Supplier did not give Ms L sufficient information, in good time, on the various charges she could have been subject to as a Fractional Club member in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Ms L nor the PR have persuaded me that she would not have pressed ahead with her purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its facts and circumstances.

As for the PR's argument that Ms L's heirs would inherit the on-going management charges, I fail to see how that could be the case or that it could have led to an unfairness that warrants a remedy.

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 Ms L and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

Overall Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Ms L's Section 75 claim. I am not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement and related Purchase Agreement that was unfair to her 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 her.'

The Lender confirmed its acceptance of the PD and that it had nothing further to add.

The PR also responded – it did not accept the PD and provided some further comments and evidence it wished to be considered.

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

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 Ms L and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Ms L 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 its response to my PD. Indeed, it says it accepts my provisional conclusions in relation to those other points. On that basis, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on the PR's points raised in response.

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

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

The PR has provided its further thoughts as to Ms L's likely motivations for purchasing Fractional Club membership. I recognise it has interpreted Ms L's testimony differently to how I have and thinks it points to her having been motivated by the prospect of a financial gain from Fractional Club membership. But I'm not persuaded that the evidence supports the PR's position on the matter.

In my provisional decision I explained the reasons why I didn't think Ms L's purchase was motivated by the prospect of a financial gain (i.e., a profit). I recognise that, in some of the evidence provided, suggestion is made that Ms L believed she stood to profit from Fractional Club membership. The PR says that, when considered in the round, the evidence demonstrates she was induced into the Purchase and Credit Agreements by the promise of an investment that would bring a profit.

Although I have carefully considered the PR's arguments in this regard, including the additional context it's attempted to provide, I'm not persuaded the conclusion I reached on this point was unfair or unreasonable. I still think it reasonable to place emphasis on Ms L's written statement which mentions the somewhat vague prospect of a *'better investment'*, and in which she highlights other reasons for her going ahead with the purchase. The copy handwritten call notes from the PR broadly echo that aspect of the written statement.

I recognise, as the PR says, that Ms L said in her initial enquiry form to a third-party timeshare relinquishment company that she wanted to exit her timeshare as she didn't believe she would make a profit. But that's not how she expressed what she remembered in her written statement, as it would be reasonable to expect her to do in her documented recollections of the sale.

The PR asks why Ms L would have traded in her existing timeshare for Fractional Club membership if not to invest, as she was already entitled to holiday with the Supplier. But, as I set out in my PD, Ms L stated that she was sold Fractional Club membership on the basis that *'members come first'*. I think that may well have been a material factor for her.

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 Ms L's purchasing decision. And for that reason, I do not think the credit relationship between Ms L and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

S140A conclusion

Given all of the factors I've looked at in this part of my decision, including the relevant relationships, arrangements and payments between the Lender and the Supplier and having taken all of them into account, I'm not persuaded that the credit relationship between Ms L and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

Overall conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Ms L's Section 75 claims. I am not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement and related Purchase Agreement that was unfair to her 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 her.

My final decision

For these reasons, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 18 March 2026.

Nimish Patel
Ombudsman