DRN-6171406

Financial Ombudsman Service

The complaint

Mrs 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 her claim under Section 75 of the CCA.

What happened

Mrs L purchased a membership of a fractional timeshare from a timeshare provider (the 'Supplier') on 01 April 2009 (the 'Time of Sale') at a cost of £17065.90 (the 'Purchase Agreement') for a number of weeks per year at specific type of property (the 'Allocated Property') named on her purchase agreement for a set term. Mrs L paid for this membership taking finance of £17065.90 from the Lender (the 'Credit Agreement'). The borrowing was paid off on 15 May 2019.

Mrs L – using a professional representative (the 'PR') – wrote to the Lender (dated 15 November 2023) and said that Mrs L had lost out and wished to make a claim under S140 CCA and under S75 of the CCA against the Lender.

On 17 December 2024, the Lender issued their final response letter on the matter rejecting the complaint on every ground. (The last year of use of the membership was listed on the sale documentation as 2024.)

On 21 January 2026 Mrs L's complaint was assessed by an Investigator who, having considered the information on file thought the S75 claim on the sale was fairly declined under the Limitation Act 1980 and that the S140A claim should not be upheld. The investigator also found that no commission was paid and that the broker had been authorised at the time of sale.

The PR on behalf of Mrs L asked for an Ombudsman's decision – which is why it was passed to me.

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 no different to that shared in several hundred ombudsman decisions on very similar complaints albeit that this purchase was in 2009 which predates some of the regulation in similar, later, cases.

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.

And having done that, I do not think this complaint should be upheld.

Firstly I should make <u>very clear</u> (my emphasis) that in terms of the regulatory context that applies here as this purchase was in April 2009 neither The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations') nor the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code') apply to this purchase as the sale predate these coming into force. As neither of these were retrospective, I find that this sale of this membership cannot be in contravention of them. As such I see nothing to be gained by considering the any arguments referencing these regulations and code as they simply did not apply at the time of sale.

I also 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.

The S75 claim

Within the letter of claim the PR made a claim on Mrs L's behalf under S75 of the CCA. These include allegations of misrepresentation during the sales process and submissions in support of those allegations.

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. In short, a claim against The Lender under section 75 essentially mirrors the claim Mrs L could make against the Supplier.

Under section 9 of the Limitation Act 1980, Mrs L had to make any claim within six years of when such misrepresentations are said to have happened or when alleged breaches of contract occurred because those are the points from which she would have lost out. As she didn't make her S75 claim until 2023 it is clear to me that the Lender could rely on the Limitation Act as a complete defence from any claim with regard to misrepresentations at the point of sale as they were out of time. The PR has made the argument that the misrepresentation and or breach were concealed from Mrs L so the time limit should start later. However Mrs L's own statement makes clear she was trying to book 'peak' times soon after purchase thereby illustrating that she was aware from that point in time of the issue of not being able to book 'peak' times. So although I don't agree with the PR's analysis of the facts (and law) here, even if I accept their argument of when Mrs L knew there was a problem (which I don't) she's still well out of time as she says she couldn't book 'peak' from soon after this purchase.

Mrs L says in her submissions that they could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that they consider that the Supplier was not living up to its end of the bargain, and had breached the Purchase Agreement. I've not seen any persuasive evidence from Mrs L on this point such as failed booking attempts or a reservation history. Like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance (to which Mrs L points). Some of the sales paperwork in such sales would have stated that the availability of holidays was/is subject to demand. I accept that she may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

The Lender has pointed to documentation showing there were different tiers of membership provided by the Supplier which included both red/high weeks and also a higher tier of 'peak' which was a different tier of membership (presumably at a higher cost). On this particular point I've considered Mrs L's written and signed statement. The 'upshot' of what she says in that statement is that prior to this purchase in 2009 she knew she couldn't book 'peak' weeks under her existing membership at that time but then didn't buy the 'peak' tier of membership in 2009 knowing what she was buying wasn't the 'peak' tier of membership. I say this because she says in reference to her 2006 purchase (not the subject of this complaint) she says:

"*We signed an agreement with a (Supplier representative) at (Supplier) on the 22/04/2006 for a 2 Bedroom (Sleeps 6) unit in HIGH Season for one week costing £11,550 (contract included in documents). We got a loan through (a different lender) for £11,615. Very excited about this I asked to book a week during the August 2007 school holidays only to be told that the 6 week period over the school holidays was considered a "PEAK RED" period and we couldn't book during this time. HIGH weeks didn't cover these 6 weeks. We were sure it did as the comments said RED/HIGH Season."*

So clearly Mrs L is saying she knew the membership she purchased in 2006 didn't include 'Peak' by August 2007 (that is prior to the purchase in this complaint). It also seems apparent from what Mrs L says that at that point she believed "red/high" was the same as 'peak' despite accepting she'd been told differently. I say this because she says "*HIGH weeks didn't cover these 6 weeks. We were sure it did as the comments said RED/HIGH Season."*

I've seen the purchase documentation from 2009 which clearly says they purchased 'Red/High' but also clearly doesn't say that they've purchased 'Peak'. And I note both Mr L and Mrs L signed this document. And I can see other documentation showing they bought 'red' and that they signed that as well. So Mrs L's own statement on the matter accepts she knew prior to purchase in 2009 that there was a 'peak' tier and that at the time of this sale she didn't buy that (which is supported by the documentation). Accordingly I'm not persuaded there's any breach or material misrepresentation here either on the issue of the tier of membership purchased/available. So I'm not persuaded Mrs L has lost out due to how the Lender considered her S75 claim.

The S140 claim

Having considered the entirety of the credit relationship between Mrs 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.

Having considered the entirety of the credit relationship between Mrs 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, when relevant
6. Any existing unfairness from a related credit agreement.

I should also add that the relevant 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.

It is also important to remember that although the Lender has to treat claims to it fairly there is a need for claims to be made out properly as they would have to be as they would against the supplier directly. From what I've seen here I'm not persuaded that there are any actionable misrepresentations or breaches of contract here which would render the relationship unfair in the round for the reasons already stated.

While the PR says that the right affordability checks weren't carried out at the Time of Sale, 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 Mrs L was actually unaffordable, before also concluding that they 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 Mrs L. The PR simply hasn't demonstrated that there is a failing here or evidenced that Mrs L couldn't afford the repayments. And the Lender has said appropriate checks were done and I've not seen any persuasive evidence that Mrs L indicated to it that she was having trouble making the payments. So I'm not persuaded there's anything for the Lender to remedy on this point.

I acknowledge that Mrs L may have felt weary after a sales process that may have gone on for a long time. But she says little about what was said and/or done by the Supplier during their 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 the membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mrs 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 should also add that when consumers are pressured into purchases against their will then they feel that unfairness at that point in time having been forced into a financial commitment against their wishes. Mrs L has provided no persuasive reasoning why she didn't use the fourteen day 'cooling off period' to exit the arrangement let alone why she waited over a decade to raise this issue which she must have felt from the time of sale. So I'm not persuaded she was pressured into this purchase.

The PR says there was one or more unfair contract terms in the Purchase Agreement and that makes the credit relationship unfair. However, the case law on Section 140A makes it clear that issues such as 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 in any case, I can't see that any such terms were operated unfairly against Mrs L in practice, nor that any such terms led her to behave in a certain way to her detriment. And with that being the case, I'm not persuaded that any of the terms governing this timeshare membership are likely to have led to an unfairness that warrants a remedy.

The PR also says that Mrs L was not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of this membership. As I have 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. And I should also add that it is incumbent on the claimant to make out the facts of their claim and the Lender to then consider it as it should. I appreciate that a lot of time has passed since this purchase and memories fade and direct evidence may no longer be available, but it remains the case that the claimant must make out the facts of their claim.

I acknowledge that it is also possible that the Supplier did not give Mrs L sufficient information, in good time, on the various charges they could have been subject to as timeshare members. But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mrs L nor the PR have persuaded me that they would not have pressed ahead with their purchase had the finer details of the memberships ongoing costs been disclosed by the Supplier, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances. So in the round I'm not persuaded that Mrs L has shown how the relationship was unfair and accordingly I'm not persuaded that the Lender has treated her unfairly by not paying her claim.

The PR has argued that the membership lasted in 'perpetuity' and that Mrs L was told that. However I've seen no evidence to support this contention and I note that the purchase documentation shows the rights under the membership to use accommodation had an end date (in 2024). Its also clear from the documentation that non-payment of charges brings an end to the membership. So I'm not persuaded that this argument should lead me to consider the relationship to be unfair.

The Lender has shown that no commission was paid in this sale and this was described in the investigator's assessment. The PR has not contended this issue and I'm not persuaded that this has caused any loss to Mrs L or caused any significant unfairness. So I see nothing to be gained by considering it further.

Similarly the Lender has illustrated why it considers that the credit broker was authorised at the time. The PR hasn't contended this nor illustrated how Mrs L would have lost out as a result of this. So having considered this evidence I see nothing to be gained by considering the matter further.

I don't think the Lender has considered the S140 claim unfairly. I also think the Lender considered the s75 claim fairly because Limitation can be applied. And even if it couldn't be applied, I don't think the section 75 claim should succeed for the reasons given. So all things considered I don't think this complaint should succeed.

My final decision

I don't uphold this complaint for the reasons given.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 21 May 2026.

Rod Glyn-Thomas
Ombudsman