DRN-6220167

The complaint

Mr A'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 them 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

Mr A 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 their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 8 May 2016 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,800 fractional points at a cost of £11,279 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr A 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 their membership term ends.

Mr A paid for their Fractional Club membership by taking finance of £20,609 from the Lender (the 'Credit Agreement') which included consolidation of a previous loan for membership with another lender.

Mr A – using a professional representative (the 'PR') – wrote to the Lender on 15 March 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.

I haven't seen a copy of the Lender's response, but my understanding is that it declined to take action in relation to the complaint.

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

Mr A 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') dated 11 November 2025. In that decision, I said:

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

I don't think it would be fair or reasonable to uphold this complaint for reasons relating to Mr A's Section 75 claim. I'll explain why.

As a general rule, creditors can reasonably reject Section 75 claims that they are first

informed about after the claim has become time-barred under the Limitation Act as it wouldn't be fair to expect creditors to investigate such claims so long after the liability arose and after a limitation defence would be available in court. So, it is relevant to consider whether Mr A's Section 75 claim was time-barred under the Limitation Act before they put it to the Lender.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim the consumer could make against the Supplier.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2 (1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued (see Section 2 of the Limitation Act).

But a claim, like the one in question here, under Section 75 is also 'an action to recover any sum by virtue of any enactment' under Section 9 of the Limitation Act. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was the Time of Sale. I say this because Mr A entered into the purchase of their timeshare at that time based on the alleged misrepresentations of the Supplier – which they say they relied on. And as the loan from the Lender was used to help finance the purchase, it was when they entered into the Credit Agreement that they suffered a loss.

Mr A first notified the Lender of their Section 75 claim on 15 March 2023. And as more than six years had passed between the Time of Sale and when they first put their claim to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mr A's concerns about the Supplier's alleged misrepresentations.

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 Mr A 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. *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 A and the Lender.

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

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

The PR says, for instance, that the right checks weren't carried out before the Lender lent to Mr A. 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 the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr A 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 them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for the Mr A.

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 the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr A knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for them, 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 A financial loss – such that I can say that the credit relationship in question was unfair on them as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate them, even if the loan wasn't arranged properly.

The PR also says that there was one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Mr A in practice, nor that any such terms led them to behave in a certain way to their detriment, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

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

Overall, therefore, I don't think that Mr A credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR says the credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to them 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 Mr A'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 A were 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 A the prospect of a financial return – whether or not, like all investments, that was more than what they 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 A 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 them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them 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 A, 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 A 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 the Consumer 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 Mr A 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 Mr A and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

The Letter of complaint submitted by the PR mentions membership having been sold as an investment, but it does so in an identical fashion using the same statements as in several other complaints for different consumers. As a result, I have reason to doubt that what's been said in the Letter of Complaint about investment is representative of Mr A's thoughts at the Time of Sale.

In submitting the complaint to this service, the PR supplied what is says is a statement from Mr A which seems to offer his account of the sale of the membership in question (as well as an earlier purchase which isn't covered by this complaint). The statement is two pages long and gives a detailed account of both sales. Referring to the 2016 purchase in question, Mr A says:

"We were also told that we'd be able to sell these fractional rights back to CLC for a profit at the end of the 19-year period."

So, I accept that Mr A has alleged that the Supplier marketed and sold membership as an investment. However, it's the only point in his statement in which he mentions investment. The remainder of the statement raises other dissatisfaction about the membership. It doesn't seem clear to me from the statement that this point was one of significant importance nor a motivating factor in Mr A having made the purchase in question – and, significantly, he's not said anything to that effect.

Rather, it seems plausible to me that the motivating factor in Mr A's purchase was to gain additional holiday rights. And it's indisputable that he did that, because he traded in a membership of 1,200 points to get 1,800 points under the membership in question. I also understand that the upgrade included a move to the Supplier's premium service which featured various other benefits such as a higher standard of accommodation.

Lastly, in determining how much weight to put on Mr A's statement, I need to take into account that the Letter of Complaint was issued in March 2023. As I've covered above, the Letter of Complaint makes arguably generic statements about investment. There's no mention to Mr A's actual account of the sale, and the statement wasn't supplied to the Lender as part of the complaint.

A month or two subsequent to the Letter of Complaint, there was a judgment handed down – 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'). From that judgement it could be held that the marketing of fractional points club membership as an investment was a key issue when deciding whether a credit agreement was unfair or not. It was only after this judgement that Mr A's statement was supplied. So, the timing under which Mr A's statement was supplied seems unusual to me. There seems to me to be a very real risk that Mr A's recollections were coloured by the judgment in Shawbrook & BPF v FOS.

As well as taking into account the problematic timing of Mr A's statement, the statement itself doesn't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit – it simply says that Mr A was told that there would be a profit, and there's several other reasons I've mentioned above that I think were more likely to be motivating factors for Mr A, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision Mr A ultimately made.

That doesn't mean Mr A 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, on balance, 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 A'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 their 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 A and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

Mr A's Commission Complaint

I note that one of Mr A's other concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. The Supreme Court's recent judgment Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 ('Johnson, Wrench and Hopcraft') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer–credit brokers. So, once I understand the commission arrangements relevant to Mr A's complaint, I will address this aspect of the complaint before finalising my thoughts overall.

In conclusion, given the facts and circumstances of this complaint, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mr A's Section 75 claim. And, putting the issue of commission to one side for the time being, I was not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct the Lender to compensate them as things stood.

The Lender accepted the PD.

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

I subsequently communicated how I was not persuaded that Mr A's credit relationship with the Lender wasn't unfair to them for reasons relating to the commission arrangements between it and the Supplier.

The Lender accepted what I'd said but the PR did not respond by the deadline set. 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 in the main relate to the issue of whether the credit relationship between Mr A and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr A 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 they didn't make any further comments in relation to those in their response to my PD. Indeed, they haven't said they disagree 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 the Lender participate in an unfair credit relationship?

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

My PD set out my assessment of Mr A's testimony. Part of that was to consider *when* it was written, and whether it may have been affected by external factors such as the widespread publication of the outcome of *Shawbrook and BPF v FOS*.

The PR says that it was taken in 2020 so Mr A's recollections could not have been influenced by the aforementioned judgement. The PR said that Mr A's recollections were only provided to this service when requested in 2023.

This case was not set up until 2025. The Letter of Complaint had been issued to the Lender in 2023, and it has said that Mr A's testimony was not supplied to it until the matter had been referred to this service. I have to question why, if Mr A testimony had been taken in 2020, it wasn't supplied in support of his complaint. And taking into account I haven't seen any persuasive evidence to demonstrate when it was taken, and knowing that the first time it was provided to this service was in 2025, I maintain that there is a risk that Mr A's testimony was coloured by the outcome in *Shawbrook & BPF v FOS*.

In addition to having the concerns above, as my PD also explained, I'm not persuaded that what Mr A said suggests that investment was an important and motivating factor in their purchase. To reiterate, Mr A's testimony covers the sale of two Fractional Club membership, the later of which is relevant to this case. He mentions that he was told he'd make a profit. However, he also talks at length about holiday entitlement and various other points of dissatisfaction with membership. There's little to no other mention of him having held out hope of a profit or financial gain. Mr A having mentioned profit amid a variety of other reasons for his purchase, as well as subsequent dissatisfaction, doesn't suggest to me that it had been an important and motivating factor in him having made the purchase in question.

Given all of the above, and on balance, the way in which the evidence has been provided makes me conclude that I can place little weight on it. Additionally, I've not been persuaded by Mr A's testimony. So, ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr A's purchasing decision.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my provisional decision, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold

in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr A's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mr A and the Lender was unfair to them for this reason.

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 Mr A's Section 75 claim, and I am not persuaded that the Lender 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 the Lender to compensate him.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 9 April 2026.

Stephen Trapp
Ombudsman