DRN-6228346

The complaint

Mrs O says that Clydesdale Financial Services Limited, trading as Barclays Partner Finance – (the Lender), unfairly declined her claim under section 75 of the Consumer Credit Act 1974 ('CCA'). And she says her creditor- debtor relationship with the Lender was unfair to her under section 140A of the CCA.

What happened

In February 2010, Mrs O with her husband, purchased a timeshare membership – which I'll call "Vacation Club membership" – from a timeshare provider (the 'Supplier'). It provided 1,501 Vacation Club points.

The purchase price for the Vacation Club membership was £22,014. Mrs O paid for the membership by trading in her Trial membership for £5,995 and borrowed £19,543 from the Lender to pay for it in her sole name.

On 30 October 2019, Mrs O – using a professional representative ('PR') – wrote to the Lender (the 'Letter of Claim'), to make a claim under Sections 140A and 75 of the CCA.

The Letter of Claim made a number of allegations in respect of what was considered to be an unfairness in the relationship between the Lender and Mrs O, and a number of misrepresentations that had been made to her. In summary:

- Mrs O wasn't provided with the required information.
- The upgrade was explained as an investment in new property that was being built and she would get better accommodation.
- She was told she could sell her membership back to the Supplier and it would assist in finding an alternative buyer if asked.
- The Timeshare was highly marketable and could easily be re-sold
- Mrs O was told that the Timeshare was an investment.
- Appropriate credit worthiness assessments weren't carried out.

On 29 April 2022, the PR wrote to the Lender again. It said that the Spanish Supreme Court had ruled that Timeshare Consumer Contracts in perpetuity were illegal and that as a result, Mrs O was entitled to redress.

The Lender dealt with the Letter of Claim as a complaint, and it appears that it issued its final response letter on 3 July 2023. It said that in respect of Section 75 of the CCA, the complaint had been made out of time. It didn't uphold the complaint in respect of the Section 140A claim.

The complaint was referred to this service and considered by one of our investigators who didn't uphold it. Mrs O disagreed with the Investigator's assessment and asked for an Ombudsman's decision.

In August 2024, the PR provided a witness statement from Mrs O, dated 5 August 2020, which it said, evidenced that the Timeshare was sold to her as an investment. The investigator then provided a response to the information provided. The PR reiterated that Mrs O wanted an ombudsman review of her complaint - – which is why it has been passed to me for review.

I issued a provisional decision explaining why I didn't think the complaint should be upheld. The Lender said in response that it agreed with my decision. No response was received from the PR.

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.

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 and not having received any further submissions or evidence to consider, I remain of the opinion that this complaint should not be upheld. I've set out my reasoning again below. Although the Vacation Club membership was taken out in the names of Mrs O and her husband, the finance was taken out in Mrs O's sole name. So, I will refer to Mrs O throughout the rest of my decision.

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

As both sides may already know, a claim against the Lender under Section 75 essentially mirrors the claim Mrs O could have made against the Supplier. Certain conditions must be met if this protection is engaged – which are set out in the CCA. The Lender does not dispute that the relevant conditions are met in this complaint, but I don't think Mrs O would have been able to make a successful claim for misrepresentation under S75. I'll explain why. At the time the PR notified the Lender of Mrs O's claim, in 2019, I think it would have been time-barred under the Limitation Act 1980 ("LA"). The LA sets out limitation periods (time limits) for bringing various types of legal claim. 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 limit normally runs six years from the date a person suffers damage as a result of the misrepresentation – such as entering into a contract and incurring liabilities they wouldn't have otherwise. This means the time to bring a claim for misrepresentation would have been six years from the Time of Sale, so the

limitation period for such a claim would have expired in February 2016, which was before the PR notified the Lender of the claim.

So, I do not think the Lender was wrong to decline it. However, the judgment in Scotland and Reast explains that, even if a limitation period has expired for a standalone misrepresentation claim, relevant misrepresentations that could be attributed to the Lender can be considered as part of the assessment of the unfairness of the credit relationship. So, I have gone on to consider those matters later in this decision.

Section 75 of the CCA: the Supplier's breach of contract

The LA also applies to claims for breach of contract, with the relevant limitation period normally expiring six years after the date of the breach or breaches in question. However, very little information has been provided in the letter of claim about exactly what (if any) the alleged breaches were, or when they occurred. This makes it difficult to arrive at any conclusion that the Supplier must have been in breach of contract. Overall, therefore, from the little evidence I have seen to date, I do not think the Lender is liable to pay any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

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

Having considered the entirety of the credit relationship between Mrs O 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 in relation to Vacation Club membership, 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 sales given their circumstances; and, when relevant
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 Mrs O and the Lender.

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

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

The PR says, for instance that no affordability checks were carried out to ensure that Mrs O could afford the loan. 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 Mrs O 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 Mrs O.

And as for the other allegations regarding unfair commercial practices that the PR says were carried out by the Supplier, and the promises that it says were made, given the limited evidence in this complaint, I'm not persuaded that any prohibited practices were carried out, or promises made as alleged.

Overall, therefore, I don't think that Mrs O's credit relationship with the Lender was rendered unfair to her under Section 140A for any of the reasons above.

Was Fractional Club membership marketed and sold at the Time of Sale as an investment in breach of Regulation 14(3) of the Timeshare Regulations?

The Lender does not dispute, and I am satisfied, that Mrs C's Vacation 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 membership of the Vacation Club 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. So, that is what I have considered next.

When the complaint was first referred to this service, the PR didn't provide any direct, first-hand testimony from Mrs O. It subsequently provided a statement from her in 2024 after the investigator issued their non uphold view. And it seems to be suggesting the statement was taken in 2020. I'm surprised that if the statement was taken in 2020, that it wasn't provided to this service with the other documentation when the complaint was first referred to this service in January 2024.

Mrs O's membership was a Vacation Club membership. And the benefits provided by the membership were through the use of the points that were purchased through that membership. There was no underlying investment through that membership in an allocated property. So, Mrs O couldn't have a share in an underlying investment, because there wasn't one. Consequently, I'm not persuaded that the Vacation Club membership purchased by Mrs O was marketed to her as an investment, in the way that has been suggested by the PR.

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

The PR says that Mrs O was not given sufficient information at the Time of Sale by the Supplier about membership, including about the ongoing costs of Vacation Club membership.

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 Mrs O sufficient information, in good time, on the various charges she could have been subject to as a Vacation 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 Mrs O nor the PR have persuaded me that she would not have pressed ahead with her purchase had the finer details of the Vacation 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.

Finally, I note that the PR requested details of any commission paid by the Lender to the Supplier and reserved Mrs O's position until it received the information. For completeness, I've therefore considered whether or not the commission payment rendered the credit relationship unfair.

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 relationships 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 Mrs O in arguing that her credit relationship with the Lender was unfair to her for reasons relating to commission given the facts and circumstances of this complaint.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mrs O, 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 Mrs O into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that the Lender 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 the Lender and the Supplier failed to follow the relevant regulatory guidance at the Times of Sale, it is for the reasons set out below that I don't think any such failure is itself a reason to find the credit relationship in question unfair to Mrs O.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mrs O entered into wasn't high. At £1,317.20, it was only 6.74% of the amount borrowed and even less than that (3.98%) as a proportion of the charge for credit. So, had she 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 persuaded that she either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mrs O wanted Vacation Club membership and had no obvious means of her own to pay for it. And at such a low level, the impact of commission on the cost of the credit she needed for a timeshare he wanted doesn't strike me as disproportionate. So, I think she would still have taken out the loan to fund her purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen, 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 Mrs O but as the supplier of contractual rights she 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 her when arranging the Credit Agreement and thus a fiduciary duty.

Overall, therefore, I'm not persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mrs O.

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

Commission: The Alternative Grounds of Complaint

While I've found that Mrs O's credit relationship with the Lender wasn't unfair to her 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 Mrs O'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 the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mrs O (i.e., secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the Times 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 Mrs O 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 her. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Times 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 the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think she would still have taken out the loan to fund her purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

The Supplier's alleged breach of Spanish Law and its implications on the Credit Agreement

The PR appears to be arguing that the Purchase Agreement was unlawful under Spanish law, which it says has been confirmed by a number of judgements issued by Spanish Courts.

However, as I can't see that the Supplier (i.e., company that entered into the Purchase Agreement) is itself the subject of a Spanish court judgment in favour of Mrs O, it seems to me that there is an argument for saying that the Purchase Agreement is valid under English law.

I also note that the Purchase Agreement is governed by English law. So, it isn't at all clear that Spanish law would be held relevant if the validity of the Purchase Agreement were litigated between its parties and the Lender in an English court. For example, in Diamond Resorts Europe and Others (Case C-632/21), the European Court of Justice ruled that, because the claimant lived in England and the timeshare contract governed by English law, it was English law that applied, not Spanish, even though the latter was more favourable to the claimant in ways that resemble the matters seemingly relied upon by the PR.

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 Mrs O 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 the reasons set out above, my decision is not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 13 April 2026.

Simon Dibble
Ombudsman