DRN-6229239

The complaint

Mr S' complaint is, in essence, that Clydesdale Financial Services Limited, trading as Barclays Partner Finance (the 'Lender'), acted unfairly and unreasonably by being party to an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA').

What happened

Mr and Mrs S purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 6 June 2017 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 810 fractional points at a cost of £13,910 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs S 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 the end of their membership term.

Mr and Mrs S paid for their Fractional Club membership by taking finance of £13,910 from the Lender in Mr S' name (the 'Credit Agreement'). As the finance used for the purchase was in Mr S' sole name, only he is eligible to bring this complaint.

Mr S – using a professional representative (the 'PR') – wrote to the Lender on 8 April 2025 (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.

The Lender dealt with Mr S' concerns as a complaint and issued its final response letter on 10 June 2025, rejecting it on every ground.

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 S disagreed with the Investigator's assessment and 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 3.6.4 R 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.

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

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

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

Having considered the entirety of the credit relationship between Mr S and the Lender along with all 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 have then considered the impact of these on the fairness of the credit relationship between Mr S and the Lender.

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

The Lender does not dispute, and I am satisfied, that Mr 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.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this final 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 S the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But it's 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 S as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to him as an investment, i.e. told him or led him to believe that Fractional Club membership offered him the prospect of a financial gain (i.e. a profit) given the facts and circumstances of *this* complaint.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of Regulation 14(3) of the Timeshare Regulations.

On the one hand, it's 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 S, the financial value of their share in the net sales proceeds of their allocated property along with the investment considerations, risks and rewards attached to it.

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 also possible that Fractional Club membership was marketed and sold to Mr S 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 Mr S 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 S 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 S and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

The PR has provided a statement from Mr S dated 22 October 2024 containing his recollections of his interactions with the Supplier: Amongst other things, this says:

> "[…]
>
> 18. We were then taken back to the sales office, where the salesperson started to tell us more about the fractional membership. He explained that the fractional membership would mean that we owned a share of a property and after 15 years, once the price of the property had gone up, the property would be sold and we would receive a profit. The salesperson seemed to put emphasis on the 'profit' element and explained that in Spain the property market was doing very well.
>
> 19. At this point, we were both feeling very pressured to purchase into the membership. We didn't really fully understand how the fractional membership worked nor did we understand the details behind the property. We told the salesperson multiple times that although the profit sounded good, we couldn't afford it.
>
> 20. When it came to purchasing the membership, we told the salesperson that we didn't want to make the purchase as we couldn't afford it. The salesperson tried to offer us better deals however, we told the salesperson that we simply could not afford it and left the meeting.
>
> 21. Over the next couple of days, [name of sales representative] continuously came to our apartment to try and convince us to purchase the membership.
>
> 22. The day after we had declined to purchase due to affordability, [name of sales representative] collected us from our apartment and took us for a complimentary breakfast. Following the breakfast, we were shown some more properties that [the Supplier] had within their portfolio.
>
> 23. After looking at the properties, we were taken back to the sales office to speak to one of the senior managers. We were again offered a number of deals and offers however, we still told them that we could not afford it.
>
> 24. The following day, we were again collected from our apartment by [name of sales representative] who told us that he wanted us to talk to the General Manager. He told us that the General Manager had been with [the Supplier] for a number of years and

> that he had a number of contacts with the banks so could get us a really good deal. The only reason we decided to go with [name of sales representative] is because of how high up the General Manager was.
>
> 25. We were taken to the sales office again, where we spoke to the General Manager. The manager said that he had a lot of luxury cars and that he had bought them using the profit he made from the fractionals he had purchased. He then went on to say that he would reduce the monthly payments on the loan by around £400 - £500 which on the face of it made the loan more affordable.
>
> 26. The manager told us that the fractional was an investment and that it was worth around £35,000. He said that the fraction would increase to be around £45,000 meaning that we would make a profit but also be able to enjoy holidays.
>
> 27. After hearing how much profit we would potentially be able to make, we eventually agreed to purchase the membership.
>
> […]
>
> 34. Had the General Manager told us that we would not be getting property rights and it was just holidays, we would not have purchased the product. The reason we purchased the product is because it was asset-backed and we were told that we would make a profit.
>
> […]"

But it was only after 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) ('*Shawbrook & BPF v FOS*') was handed down, that Mr S recalled that the Supplier led him to believe that Fractional Club membership offered him the prospect of a financial gain. And experience tells me that the more time that passes between a complaint and the event complained about, the more risk there is of recollections being vague, inaccurate and/or influenced by discussion with others.

Mr S' statement was written around seven years after the Time of Sale and contains several omissions and inconsistencies. For example, Mr S makes no mention of the fact he agreed to purchase a trial membership – costing almost £4,000 – but cancelled this during the cooling-off period. Despite the cancellation, he retained a promotional holiday he received as part of his initial agreement to purchase – and it was on this that he purchased Fractional Club membership. He did not "win" a free week's holiday as he describes, and he did not use the promotional holiday "around a month after" this was provided but almost a year later.

The Supplier has confirmed that the sales presentation in question took place on the third day of Mr S' holiday, not the day after he arrived as describes. And that Mr S agreed to purchase the same day as his sales presentation, not some days later. It's also said that Mr S misremembers the name of the sales representative.

At paragraph 28, Mr S says "when it came to sorting out the finance, we were not given a choice of lender." But the Lender has provided an application form that shows he also applied to a different finance provider. Further, at paragraph 35, Mr S says the Supplier did not make him aware he would have to pay maintenance fees. However, its sales notes show that he queried how to pay these at the Time of Sale.

As there isn't any other evidence on file to corroborate Mr S' recent evidence about his

motivations at the Time of Sale, there seems to me to be a very real risk that his recollections were coloured by the judgment in *Shawbrook & BPF v FOS*. And with that being the case, coupled with the omissions and inconsistencies in his account, I'm not persuaded that I can give his written recollections the weight necessary to find that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr S' decision to purchase this at the Time of Sale was motivated by the prospect of a financial gain (i.e. a profit). And for that reason, I do not think the credit relationship between Mr S and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

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

The PR says that Mr S was not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership.

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 failures 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 Mr S sufficient information, in good time, on the various charges he could have been subject to as a Fractional Club member in order to satisfy the requirements of Regulation 12 of the 2010 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 Mr S nor the PR have persuaded me in this particular case that he would not have pressed ahead with his purchase had those details 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.

Conclusion

In summary, I am not persuaded that the Lender was party to a credit relationship with Mr S under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate him.

My final decision

My final decision is to not uphold Mr S' complaint about Clydesdale Financial Services Limited, trading as Barclays Partner Finance, for the reasons provided.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 May 2026.

Alex Salton
Ombudsman