

The complaint

Mr R'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 him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying claims under Section 75 of the CCA.

The timeshare in question was bought jointly by Mr and Mrs R, but as the loan used to make the purchase was in Mr R's sole name, he is the only eligible complainant here. I will, however, refer to both Mr and Mrs R where it is appropriate to do so.

What happened

Mr and Mrs R were existing members 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 'Infiniti Fractional Club' – which they bought on 6 March 2017 (the 'Time of Sale'). They entered into an agreement with the Supplier to convert their existing 153,000 club infiniti points into 153,000 fractional points at a cost of £12,502 (the 'Purchase Agreement').

Unlike their existing membership, the Infiniti Fractional Club membership was asset backed – which meant it gave Mr and Mrs R 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 R paid for their Infiniti Fractional Club membership by taking finance of £12,502 from the Lender (the 'Credit Agreement') in his sole name.

Mr R – using a professional representative (the 'PR') – wrote to the Lender on 2 February 2023 (the 'Letter of Complaint') to raise a number of different concerns about their purchase of the Infiniti Fractional Club and the associated Credit Agreement. 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 R's concerns as a complaint but was unable to provide him with a substantive response within the eight weeks required by the regulator, so the complaint was then referred to the Financial Ombudsman Service.

It was assessed by an Investigator at this Service who, having considered the information on file, rejected the complaint on its merits.

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

The provisional decision

I considered the matter and issued a provisional decision (the 'PD') setting out my initial thoughts on the merits of Mr R's complaint.

In the PD I said:

"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 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. It is unclear, from the information provided, whether those conditions have been met, but I note the Lender doesn't dispute that they have been. But for reasons I'll come on to below, it isn't necessary to make any formal findings on those conditions in any event.

It was said in the Letter of Complaint that Infiniti Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs R were:

- (1) Told by the Supplier that Infiniti Fractional Club membership had a guaranteed end date when that was not true.*
- (2) Told by the Supplier that Infiniti Fractional Club membership was an "investment" when that was not true.*

However, telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. After all, a share in an allocated property was, by its very nature, an investment. And while, as I understand it, the sale of the Allocated Property could be postponed in certain circumstances according to the Infiniti Fractional Club Rules, Mr R says little to nothing to persuade me that they were given a guarantee by the Supplier that the Allocated Property would be sold on a specific date when such a promise would have been impossible to stand by given the inevitable uncertainty of selling property some way into the future. And as there's nothing else on file to support the PR's allegation, I'm not persuaded that there was a representation by the Supplier on the issue in question that constituted a false statement of fact.

So, while I recognise that Mr R and the PR have concerns about the way in which Infiniti Fractional Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material

misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means I don't think that the Lender acted unreasonably or unfairly in not accepting this particular Section 75 claim.

Section 75 of the CCA: the Supplier's Breach of Contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

The Letter of Complaint sets out that Mr and Mrs R say that they could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays for instance. Some of the sales paperwork likely to have been signed by Mr and Mrs R states that the availability of holidays was/is subject to demand. I accept that they may not have been able to take certain holidays, but I've not seen any persuasive evidence which makes me think the Supplier has not done what it is contractually obliged to do so – Mr R hasn't provided any evidence of when they were unable to book their desired accommodation, or when the levels of the quality of accommodation they were contractually entitled to was not met.

It is also said that the maintenance fees Mr and Mrs R were required to pay have risen more than they were led to believe they would. But again, no evidence has been adduced to support this. The PR has not evidenced what the contract says about the charges they would be obliged to pay, nor what they have ended up paying.

So, I have not seen enough to persuade me that the Supplier has breached the terms of the Purchase Agreement. As such, I do not think the Lender is liable to pay Mr R any compensation for a breach of contract by the Supplier, so I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

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

I've already explained why I'm not persuaded that Infiniti Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale, nor that the Purchase Agreement was breached. 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 R 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. What I know about the standard of the Supplier's commercial conduct;*
- 2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation;*
- 3. The commission arrangements in place between the Lender and the Supplier; and*
- 4. The inherent probabilities of the sale given its circumstances.*

I have then considered the impact of these on the fairness of the credit relationship between Mr R and the Lender.

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

Mr R'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:

- 1. The right checks weren't carried out before the Lender lent to Mr R;*
- 2. Mr and Mrs R were pressured by the Supplier into purchasing Infiniti Fractional Club membership at the Time of Sale; and*
- 3. Mr and Mrs R were given insufficient information at the Time of Sale.*

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

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 Mr R was actually unaffordable, before also concluding that he lost out as a result, and then consider whether the credit relationship with the Lender was unfair to him for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr R.

And as regards the allegation that Mr and Mrs R were pressured into the purchase, I acknowledge that they may have felt weary after a sales process that went on for a long time. But Mr R says 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 Infiniti 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 and Mrs R made the decision to purchase Infiniti Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

The PR says that Mr and Mrs R were not given sufficient information at the Time of Sale by the Supplier in order to make an informed choice.

But it isn't clear what information the PR thinks the Supplier failed to provide at the Time of Sale. In any case, 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.

So, while I acknowledge that it is possible that the Supplier did not give Mr and Mrs R sufficient information, in good time, in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'), even if that was the case, neither Mr R nor the PR have persuaded me that he and Mrs R were deprived of information that would have led them to make a different purchasing decision at the Time of Sale. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why they led to a financial loss.

Overall, therefore, I don't think that Mr R's credit relationship with the Lender was rendered unfair to him 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 Mr R. And that's the suggestion that Infiniti Fractional Club membership was marketed and sold to him and Mrs R 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

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs R 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 Infiniti 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 Infiniti Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Infiniti Fractional Club membership was marketed or sold to Mr and Mrs R 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 Infiniti Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

It is said in the Letter of Complaint that the Infiniti Fractional Club was sold and/or marketed to Mr and Mrs R as an investment because they were told by the Supplier that they were investing in a fraction of a property, and when that property came to be sold they would receive the purchase price back and in all likelihood a profit. And Mr R himself has said that the Supplier assured them that it would be possible to sell the fractions after 10 years and would therefore make money from the membership in the end.

So, I accept that it is possible that the way the Infiniti Fractional Club membership was sold to Mr and Mrs R was 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.

Would the credit relationship between the Lender and Mr R have been rendered unfair to him had there been a breach of Regulation 14(3) of the Timeshare Regulations?

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 (if there was one) had on the fairness of the credit relationship between Mr R and the Lender under the Credit Agreement and related Purchase Agreement. This is because, as I've already said, 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 R 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 and Mrs R to enter into the Purchase Agreement and Mr R into the Credit Agreement is an important consideration.

But on my reading of the evidence before me, I am not persuaded that the prospect of a financial gain from Infiniti Fractional Club membership was an important and motivating factor when Mr and Mrs R decided to go ahead with their purchase. I'll explain.

As part of its initial submissions to this Service, the PR sent in a statement from Mr R. This was dated 29 March 2021, and set out his recollections of their entire timeshare membership history from their first purchase in 2003, up until their purchase of the Infiniti Fractional Club membership.

As far as is relevant to this complaint, he said in his statement:

"On the 22nd March 2017, we made a purchase of 153,000 Fractional points with Club Infiniti. We made this purchase whilst on another free week's holiday we had been offered by Club Infiniti in Portugal on the condition that we attended a sales meeting. Therefore, whilst on this holiday, we were approached by a representative from Club Infiniti and asked to attend a sales meeting. Therefore, we attended this meeting in a big sales room with lots of other people on a one-to-one basis. This meeting lasted 3-4 hours (which was longer than expected) and was pressured. Previously, we had learned whilst on holiday in Switzerland that this timeshare was in fact in perpetuity, and that therefore we were tied into this timeshare forever. Therefore, at this meeting, we expressed this concern. At this meeting, we were told that it would be possible to convert our timeshare points to Fractional points, which we were told would be a much better investment. We were assured that it would be possible to resell these Fractionals after 10 years and would therefore make money from this in the end. Therefore, feeling this may be the only way out of our timeshare agreements, we agreed to this purchase."

On my reading of this, it seems clear that Mr and Mrs R were concerned that their existing membership was held in 'perpetuity' – in other words, it had no end date. Having expressed this concern to the Supplier, the conversion of their points into fractional points in the Infiniti Fractional Club was presented as a solution to this. And Mr R expressly states that this was the reason they bought it:

"Therefore, feeling this may be the only way out of our timeshare agreements, we agreed to this purchase."

That doesn't mean they weren'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, and Mr R makes mention that the Supplier told them that the sale of the property at the end would make them some money. But as Mr R himself doesn't persuade me that their purchase was motivated by their 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 they ultimately made. I think they would have bought the membership anyway for the shorter and more defined membership term.

On balance, therefore, even if the Supplier had marketed or sold the Infiniti Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs R's decision to purchase Infiniti 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 they 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 R 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 a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

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 relationship 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 Mr R in arguing that his credit relationship with the Lender was unfair to him 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 Mr R, 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 Mr R 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 Time of Sale, it is for the reasons set out below that I don't currently think any such failure is itself a reason to find the credit relationship in question unfair to Mr R.

Based on what I've seen so far, 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 Mr R but as the supplier of contractual rights he and Mrs R 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 him when arranging the Credit Agreement and thus a fiduciary duty.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, the Lender didn't pay the Supplier any commission at the Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not currently 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 Mr R.

Conclusion

In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims. I am also not persuaded that the Lender was party to a credit relationship with Mr R 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 Mr R."

The responses to the provisional decision

Both the Lender and the PR responded to the PD but neither had anything further to add.

As both sides have now responded, the complaint has come back to me for further consideration.

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 ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out 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 sides, I've considered the case afresh. And having done so, and because no new evidence has been submitted or arguments made in response to my initial findings, I see no reason to depart from the outcome as set out in the provisional decision above.

Given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr R's Section 75 claims, 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 Mr R.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 15 April 2026.

Chris Riggs
Ombudsman