

## **The complaint**

Mrs P'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 her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA').

## **What happened**

Mrs P and Mr H were members of a timeshare provider (the 'Supplier') – having previously purchased a product from it. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Signature Collection' – which they bought on 26 February 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,100 fractional points at a cost of £13,680 (the 'Purchase Agreement').

Signature Collection membership was asset backed – which meant it gave Mrs P and Mr H 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. However, the Signature Collection differed from other fractional timeshares offered by the Supplier, including the type Mrs P and Mr H already held, in that members had preferential rights to stay in their allocated property, and the properties were said to be more luxurious.

Mrs P and Mr H paid for their Signature Collection membership by taking finance of £13,680 from the Lender in Mrs P's name (the 'Credit Agreement'). As the finance used for the purchase was in Mrs P's sole name, only she is eligible to bring this complaint.

Mrs P – 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 Mrs P'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.

Mrs P 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 Mrs P 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 Mrs P 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 Mrs P's Signature Collection 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 Signature Collection 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 Mrs P the prospect of a financial return – whether or not, like all investments, that was more than what she first put into it. But it's important to note at this stage that the fact that Signature Collection 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 Signature Collection. They just regulated how such products were marketed and sold.

To conclude, therefore, that Signature Collection membership was marketed or sold to Mrs P 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 her as an investment, i.e. told her or led her to believe that Signature Collection membership offered her 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 Signature Collection 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 Signature Collection as an "investment" or quantifying to prospective purchasers, such as Mrs P, 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 Signature Collection membership as an investment. So, I accept that it's also possible that Signature Collection membership was marketed and sold to Mrs P 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 Mrs P 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 Mrs P 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 Mrs P and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

The PR has provided a statement from Mrs P dated 8 April 2025 containing her recollections of her interactions with the Supplier: Amongst other things, this says the following about the Time of Sale:

"32. After a while the salesperson mentioned that there was a higher level of membership called Signature Collection. We were taken to another resort called [name of resort] to look at accommodation and also shown a signature collection apartment at [another resort]. The apartments were lovely and much posher than our current fractional.

33. When we got back to the meeting room, the salesperson told us that we would have to own the Signature Collection membership alongside our fractional membership as we had not paid enough of the loan to trade it in. At the time, this was not an issue to us as it sounded like a good investment and we would be able to sell it in the future just like our fractional. The salesperson explained to us that the signature collection membership was worth more and more attractive to sell. This was one of the main reasons we decided to purchase the Signature timeshare alongside our fractional."

Put briefly, Mrs P says that the enhanced investment potential of Signature Collection membership due to the higher standard of accommodation was a key motivation for her purchase at the Time of Sale.

In determining how much weight to place on Mrs P's statement, I am mindful that it was provided 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. The judge in that case found that the marketing of a fractional points club membership as an investment and this being a motivating factor in the subsequent purchase was a key issue in deciding whether the credit agreement was unfair or not.

It's clear that around the time Mrs P's statement was written, the PR was aware of *Shawbrook & BPF v FOS*, as the Letter of Complaint references it on several occasions. Which means that at that time, both the PR and Mrs P were likely aware of cases with similar circumstances that were upheld, as well as the reasons for that. As a result, I think there is a real risk that Mrs P's recollections could have been influenced by *Shawbrook & BPF v FOS*.

I find it somewhat telling that when describing her motivation at the Time of Sale, Mrs P makes limited references to the holiday benefits Signature Collection membership offered. After all, these were an intrinsic part of membership. It therefore strikes me as unusual that Mrs P would refer almost entirely to the investment potential when describing her motivation. I think it's unlikely her motivation would be as black and white as this, particularly as the Supplier's representatives were encouraged to emphasise the premium holiday accommodation Signature Collection membership offered.

And, as I set out earlier in this decision, Signature Collection membership presented an additional benefit of being able to stay in the Allocated Property once a year, which was not possible under Mrs P's previous membership. Another feature that the Supplier's representatives were encouraged to highlight during their sales presentations and that Mrs P has made use of. Yet there is no mention of it in her statement whatsoever.

In fact, I think it's clear Mrs P's motivation was not so linear from her comment that the investment element "was one of the main reasons" she decided to purchase. But it's notable that it's the only motivation she discusses in any detail.

All of which cements my view that there is a very real risk that Mrs P's recollections were coloured by the judgment in *Shawbrook & BPF v FOS*. And with that being the case, I'm not persuaded that I can give her 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 Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mrs P'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 Mrs P and the Lender was unfair to her 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 Mrs P was not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Signature Collection 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 Mrs P sufficient information, in good time, on the various charges she could have been subject to as a Signature Collection 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 Mrs P nor the PR have persuaded me in this particular case that she would not have pressed ahead with her 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**

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In summary, I am not persuaded that the Lender was party to a credit relationship with Mrs P under the Credit Agreement that was unfair to her 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 her.

## **My final decision**

My final decision is to not uphold Mrs P'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 Mrs P to accept or reject my decision before 11 May 2026.

Alex Salton  
**Ombudsman**