

## The complaint

Mrs V'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 her under Section 140A of the Consumer Credit Act 1974 (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

## What happened

Mr and Mrs V purchased membership of a timeshare (the 'Fractional Membership') from a timeshare provider (the 'Supplier') on 9 December 2013 (the 'Time of Sale').

Prior to that Mr and Mrs V were existing customers of the Supplier having purchased, between 2003 and 2009 30,000<sup>1</sup> points in its 'European Collection'.

These points worked like a currency such that, every year, Mr and Mrs V could use the points to stay at the Supplier's holiday accommodation. That accommodation 'cost' different amounts of points depending on the size of the apartment, its location and the time of year.

At the Time of Sale, Mr and Mrs V entered into an agreement with the Supplier (the 'Purchase Agreement') to buy 15,000 'fractional points', trading in 15,000 of their existing points from their 'non-fractional' European Collection membership towards this. This was at a cost of £10,200, with a conversion price given for their European Collection points of £1 per point.

Unlike the European Collection, Fractional Membership was asset backed – which means it gave Mr and Mrs V more than just holiday rights. It also included a share in the net sale proceeds of the property named on their Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr and Mrs V paid for their Fractional Membership by taking finance of £10,200 from the Lender (the 'Credit Agreement') in Mrs V's sole name, making her the sole and only complainant in this case. This finance was repaid in full in April 2019.

Mrs V – using a professional representative (the 'PR') – wrote to the Lender on 5 December 2019 (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.

Mrs V referred her complaint to the Financial Ombudsman Service on 3 April 2023. It was assessed by an investigator who, having considered the information on file, upheld the complaint on its merits.

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<sup>1</sup> 7,000 (2003), 9,000 (2003), 2,000 (2004), 4,000 (2005), 3,000 (2008), 5,000 (2009)

The Investigator thought that the Supplier had marketed and sold Fractional Membership as an investment to Mrs V at the Time of Sale in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'). And given the impact of that breach on her purchasing decision, the investigator concluded that the credit relationship between the Lender and Mrs V was rendered unfair to her for the purposes of section 140A of the CCA.

The Lender disagreed 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') on 13 April 2026. In that decision, 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 currently think that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and/or selling Fractional Membership to Mrs V as an investment, which, in the circumstances of this complaint, rendered the credit relationship between her and the Lender unfair to her for the purposes of Section 140A of the CCA.

However, before I explain why, I want to make it clear that my role as an Ombudsman isn't to address every single point that has been made to date. Instead, it's to decide what's fair and reasonable in the circumstances of this complaint. So, while I recognise that there are a number of aspects to Mrs V's complaint, it isn't necessary to make formal findings on all of them. That is because, even if those aspects of the complaint ought to succeed, the redress I'm currently proposing puts Mrs V in the same or better position than she would be if the redress was limited to those other aspects of the complaint.

What's more, I've made my decision on the balance of probabilities – which means I've based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

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

Having considered the entirety of the credit relationship between Mrs V and the Lender along with all of the circumstances of the complaint I 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've looked at all the evidence provided from both parties, including:

1. The Supplier's sales and marketing practices at the Time of Sale;
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; and
4. The inherent probabilities of the sale given its circumstances.

I've then considered the impact of the above on the fairness of the credit relationship between Mrs V and the Lender.

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

The Lender doesn't dispute, and I'm satisfied, that Mrs V's Fractional 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 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 Mrs V says that the Supplier did exactly that at the Time of Sale.

The term "investment" isn't defined in the Timeshare Regulations. In *Shawbrook & BPF v FOS*, the parties agreed that, 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" at [56]. I will use the same definition.

Mrs V's share in the Allocated Property clearly, in my view, constituted an investment as it offered her the prospect of a financial return – whether or not, like all investments, that was more than what she first put into it. But the fact that Fractional 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 didn't ban products such as Fractional Membership. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Membership was marketed or sold to Mrs V as an investment in breach of Regulation 14(3), I've 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 Fractional Membership offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

In a statement dated 11 February 2020 Mrs V says:

*"On 9 November 2013 we were [on holiday] when we were asked to go to meeting where they would explain the changes in our timeshare product. This went on for a much longer time than expected and during this we were told about fractional points **and how they were an investment for the future to make profit**. They said buying these points would upgrade us to a better resort and that this also meant it would sell very easily at the end of the term. We also wanted our timeshare to end at some point and purchasing fractional was sold as a way to do that. We decided to purchase..."*

*“In November 2017 we were [on holiday] again and attended the update meeting. They said that we did not have enough points to be able to have the better holidays. **We were told that if we purchased 11,000 fractional points we would be able to have the flexibility of better holidays and this would also increase the value of our previous investment.** We thought this was a good idea because we would make even more money when our points were sold. We decided to purchase.”*

...

[my emphasis]

The Lender says I should be cautious about placing too much weight on Mrs V’s statement (including the extract above) due to it *“containing multiple inaccuracies”*.

I accept that there might be some inaccuracies in Mrs V’s statement. But I’m not persuaded that these are particularly material or that they should cause me to question everything Mrs V says in her statement, including the extract above. I would also add that failing to recall and quote exact dates and lenders, going back over 15 years in some cases, doesn’t surprise me.

I would also add that I don’t agree that Mrs V’s statement lacks detail, or that it’s sufficiently lacking in detail that I shouldn’t place much weight on it. I’m also not quite sure what more the Lender might have expected Mrs V to have said over and above what she did.

The Lender points out that the paragraph beginning *“On 9 November 2013...”* quoted by me above is formatted differently to the other statement paragraphs in Mrs V’s statement and I agree. But I don’t find this to be suspicious or something that should lead me to question the ‘validity’ of Mrs V’s statement including the extracts quoted by me above.

I accept that the date on Mrs V’s statement post-dates the date on the Letter of Complaint, that the Letter of Complaint makes no reference to Mrs V’s purchase being motivated by the prospect of a financial gain and that the Letter of Complaint wasn’t received by the Lender until some two years after the date on it. But none of this leads me to conclude that I can’t or shouldn’t rely on Mrs V’s statement and in my view these highlighted matters are, on balance, simply down to poor administration on the part of the PR.

There is evidence in this case that the Supplier made efforts to address the possibility that prospective purchasers such as Mrs V might view Fractional Membership as an investment. There were, for instance, disclaimers in the paperwork the Supplier issued to Mrs V that says Fractional Membership shouldn’t be regarded as a property or financial investment.

Mrs V signed these papers to confirm she had received them. But weighing up what happened in practice is in my view rarely as simple as looking at the paperwork, particularly where (as here) that paperwork was spread over several different documents and across almost 50 pages. It’s by no means clear that Mrs V would have read and understood the disclaimers, which were in any event provided after the Supplier’s sales presentation and notably, after Mrs V made the decision to take out Fractional Membership. There’s little that’s been presented in the way of documentary evidence about how the Supplier presented Fractional Membership. For example, I haven’t been provided with any set sales presentations the Supplier confirms were used, or any other key marketing materials. Absent this, I’ve thought about what each of the parties has said, in order to reach a finding on the balance of probabilities.

Mrs V has suggested the Supplier breached Regulation 14(3) at the Time of Sale, including expressly telling her that Fractional Membership was an investment and that there was a profit to be made on her Fractional Membership. I find Mrs V's evidence in this respect consistent and compelling that it was more likely than not that the way in which Fractional Membership was sold to her included elements that amounted to marketing it as an investment with the prospect of her making a profit. And in this respect I would add that in my view Mrs V saying what she did in the paragraph that commences with "*On 9 November 2013*" needs to be read, not in isolation, but in conjunction with the paragraph that commences with "*In November 2017*" and in particular the sentence that commences with "*We were told*".

I'm also inclined to say that the existence of the disclaimers recognises there was a real risk of buyers forming the impression, from the way the Supplier was marketing and selling Fractional Membership, that it was an investment. The difficulty of articulating the benefit of fractional ownership in a way that distinguished it from Mrs V's existing European Collection membership is a relevant factor in this case. And here, beyond the disclaimers referred to above, I don't have anything from the Supplier or the Lender that shows how that benefit would have been presented to Mrs V.

Further, I think it would be fair to say that in light of the allegations Mrs V has made about what the Supplier told her, the disclaimer wording in the documents doesn't entirely counter what she says. A prospective member who was told what Mrs V says the Supplier told her could easily read the disclaimers in the paperwork without being dissuaded that investment was a legitimate secondary purpose of membership, even if it wasn't the primary purpose.

Mrs V was already a timeshare owner with 30,000 European Collection points at the Time of Sale. The purchase of Fractional Club membership involved the transfer of 15,000 of these points with no additional points being purchased at that time. So the purchase didn't give Mrs V any holiday entitlement beyond what she already had.

Given this, the Supplier must have promoted something other than taking holidays which persuaded Mrs V into thinking that purchasing Fractional Club membership was worthwhile.

Fractional Club membership was shorter than Mrs V's existing timeshare membership (with an 'exit' date) and I think it's more likely than not the Supplier will have highlighted this to Mrs V at the Time of Sale. However, I'm not satisfied she went ahead with the purchase because of this. So, the Supplier must have put forward another reason when selling Fractional Club membership.

There were only two other things that Fractional Club membership provided that weren't available to Mrs V through her existing European Collection membership. The first is the potential return on the sale of the Allocated Property. The second is the right to rent out Fractional Club points, if she chose not to use the points herself for holidaying.

As noted by the Lender there is no mention of 'Wish to Rent Scheme' in the Letter of Complaint and it isn't in dispute that Mrs V hasn't made use of the scheme. So, the purchase of Fractional Club membership by her only makes sense in my view if the other benefit of membership I refer to above, namely the possibility of a return on sale of the Allocated Property, had been promoted to Mrs V by the Supplier at the Time of Sale.

Given this, I find it more likely than not that this was put forward to her as a reason to purchase membership. And, given that there must have been some tangible benefit put forward to suggest why Mrs V purchase membership, I think it also more likely than not that the Supplier either explicitly said or suggested that she might make some financial gain or profit when membership ended.

Finally, as the Lender is aware what I need to decide in this case isn't whether the prospect of a profit was the only or main motivating factor in Mrs V's purchasing decision, but just whether it was a motivation. So notwithstanding that there might have been other factors that motivated Mrs V's decision based on what Mrs V has said and submitted I'm satisfied that the prospect of a profit was indeed a motivating factor in her purchasing decision. And for the avoidance of doubt I'm not persuaded that because Mrs V's membership may have lapsed due to the non-payment of fees detracts for this.

In conclusion, given the facts and circumstances of this complaint, I thought the Lender participated in and perpetuated an unfair credit relationship with Mrs V under the Credit Agreement and related Purchase Agreement for the purposes of section 140A CCA and because of this I thought it was fair and reasonable for me to uphold the complaint. I then set out what I thought the Lender should have to do to compensate Mrs V.

Both parties confirmed they accepted my provisional findings.

Having received the relevant responses from both parties, I'm now finalising my decision.

### **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.

As both parties have confirmed acceptance of my provisional findings I can confirm I see no reason to depart from them and I now confirm them as final.

### **Putting things right**

Having found that Mrs V wouldn't have agreed to purchase Fractional Membership at the Time of Sale were it not for the breach of Regulation 14(3) of the Timeshare Regulations by the Supplier (as deemed agent for the Lender), and the impact of that breach meaning that, in my view, the relationship between the Lender and Mrs V was unfair under section 140A of the CCA, I think it would be fair and reasonable to put her back in the position she would have been in had she not purchased the Fractional Membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr and Mrs V agree to assign to the Lender their Fractional Points or hold them on trust for the Lender if that can be achieved.

Mrs V was an existing European Collection member and her membership (in part) was traded in against the purchase price of Fractional Membership. Under her European Collection membership, she traded in 15,000 European Collection Points. And, like Fractional Membership, she had to pay annual management charges as a European Collection member. So, had Mrs V not purchased Fractional Membership, she would have always been responsible to pay an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Mrs V from the Time of Sale as part of her Fractional Membership should amount only to the difference between those charges and the annual management charges she would have paid (in respect of 15,000 points) as an ongoing European Collection member.

So, here's what I think needs to be done to compensate Mrs V with that being the case – whether or not a court would award such compensation:

- (1) The Lender should refund Mrs V's repayments to it under the Credit Agreement including any sums paid to settle the debt and cancel any outstanding balance if there is one – although it's my understanding there isn't one.
- (2) In addition to (1), the Lender should also refund the difference between Mrs V's Fractional Membership annual management charges paid after the Time of Sale and what her European Collection membership annual management charges would have been had she not purchased Fractional Membership.
- (3) The Lender can deduct:
  - i. The value of any promotional giveaways that Mrs V used or took advantage of; and
  - ii. The market value of the holidays\* Mrs V took using her Fractional Membership points if the points value of the holiday(s) taken amounted to more than the total number of European Collection points she would have been entitled to use at the time of the holiday(s) as an ongoing European Collection member. However, this deduction should be proportionate and relate only to the additional Fractional membership points that were required to take the holiday(s) in question.

For example, if Mrs V took a holiday worth 2,550 Fractional Membership points and she would have been entitled to use a total of 2,500 European Collection points at the relevant time, any deduction for the market value of that holiday should relate only to the 50 additional Fractional Membership points that were required to take it. But if she would have been entitled to use 2,600 European Collection points, for instance, there shouldn't be a deduction for the market value of the relevant holiday.

(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)

- (4) Simple interest\*\* at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.
- (5) The Lender should remove any adverse information recorded on Mrs V's credit file in connection with the Credit Agreement reported within six years of this decision.
- (6) If Mr and Mrs V's Fractional Membership is still in place at the time of this decision, as long as they agree to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify Mrs V against all ongoing liabilities as a result of her Fractional Membership.

\*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mrs V took using her Fractional Membership points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreements seems to me to be a practical and proportionate alternative in order to reasonably reflect her usage.

\*\*HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give Mrs V a certificate showing how much tax it's taken off if she asks for one.

### **My final decision**

For the reasons I've explained, my final decision is that I uphold this complaint and to settle it Clydesdale Financial Services Limited trading as Barclays Partner Finance must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs V to accept or reject my decision before 14 May 2026.

Peter Cook  
**Ombudsman**