DRN-6290483

The complaint

Ms B'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 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

What happened

Ms B purchased a membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 11 October 2016 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy eight hundred fractional points at a cost of £11,144 (the 'Purchase Agreement') having received a trade in value of £3995 for her previous trial membership.

Fractional Club membership was asset backed – which meant it gave Ms B 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 her membership term ends.

Ms B paid for the Fractional Club membership by taking finance of £15023 from the Lender (the 'Credit Agreement') which refinanced prior borrowing to purchase the trial membership.

In February 2017 Ms B traded in this membership to a different supplier during the purchase of a timeshare from that different supplier (this purchase being the subject of a separate complaint and not dealt with in this decision). However the credit agreement for this 2016 purchase continued with Ms B paying it regularly until 2022 when the Lender defaulted her.

Ms B wrote to the Lender on 17 February 2024 (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 Ms B's concerns as a complaint and issued its final response letter on 27 September 2024, 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.

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

I issued a provisional decision on the 06 February 2026, in which I said the following (in italics and smaller font for clarity):

I have considered all the available evidence and arguments to decide what is 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 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.

This membership was purchased in October 2016 (and was traded in to the different supplier in February 2017) by Ms B but I've seen no persuasive evidence of Ms B making a claim to the Lender before February 2024 regarding this purchase of this membership.

Under section 9 of the Limitation Act 1980, Ms B had to make her S75 claim within six years of when she entered into the timeshare and credit agreements – which was in October 2016 – because that is when she says they lost out having relied on false statements of fact. OR she had to make the claim for breach of contract within six years of when her membership ended which was when she traded it in to the different Supplier in February 2017. Such breaches of contract would include Ms B's argument that she couldn't holiday when she wanted to.

As the claim wasn't made to the Lender until February 2024 about this sale and following brief membership it is clearly outside that six-year time limit. So I don't think Ms B has lost out due to the Lender not upholding her S75 claim for misrepresentation or breach of contract because the Lender had a complete defence to such a claim under Section 75 because it was out of time under the Limitation Act.

For completeness I should add that Ms B has latterly pointed out that the Supplier has gone into liquidation and thus she's lost out. Firstly I'm not satisfied that this is necessarily the case as, although there have been alterations within the group of companies of which the Supplier is a member, this hasn't stopped it providing members the holiday benefits which they purchased. And in any event Ms B stopped having a membership with this Supplier in February 2017 when she traded this membership in to the different supplier. So she's still out of time under the Limitation Act.

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

Aside from what I've explained already 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. Ms B clearly feels the relationship she had with the Lender was unfair. So it's fair that this is considered under S140A of the CCA as that deals with such issues and if unfairness is found how it can be resolved.

Having considered the entirety of the credit relationship between Ms B 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, 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; and*
5. *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 Ms B and the Lender.

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

Ms B's complaint about the Lender being party to an unfair credit relationship was and is made for several reasons. They include, for various reasons, the allegation that the Supplier misled Ms B and which I've considered to include the allegation that it carried on unfair commercial practices under Regulations 5 and 6 of the CPUT Regulations. However, as Regulations 5 and 6 state, commercial practices only amount to misleading actions or omissions if, in addition to satisfying one or more of the specific matters set out in those provisions, they cause or are likely to cause the average consumer to take a transactional decision they would not have taken otherwise. And as I haven't seen enough evidence to persuade me that, if there were any such actions or omissions at the Time of Sale (which I make no formal finding on), they led Ms B to make the purchasing decision she did, I'm not persuaded that anything done or nor done by the Supplier amounted to an unfair commercial practice for the purposes of those provisions.

In addition Ms B also says that she was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale. I acknowledge that Ms B may have felt weary after a sales process that went on for a long time. But she says very little about what was said and/or done by the Supplier during the sales presentation that made her feel as if she had no choice but to purchase Fractional Club membership when she simply did not want to. She was also given a 14-day cooling off period and she has not provided a credible explanation for why she did not cancel the membership during that time. Ms B's arguments on this point fall some way short of being persuasive that Ms B made the decision to purchase this Fractional Club membership because her ability to exercise that freedom of choice was significantly impaired by pressure from the Supplier.

Ms B says she wasn't able to book holidays with the Supplier during the period of her membership and that makes the credit relationship unfair. However I've seen evidence of her taking holidays in those months and no persuasive evidence of her not being able to book holidays during that time which were within the holiday benefits she received with membership. So I don't think this makes her credit relationship unfair.

Latterly Ms B says that the right checks weren't carried out before the Lender lent finance to her. I haven't seen anything to persuade me that was the case in this complaint given its 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 Ms B was actually unaffordable, before also concluding that she lost out as a result and after that then consider whether the credit relationship with the Lender was unfair to her for this reason. Again, from the information provided, I am not satisfied that the lending was unaffordable for Ms B. If there is any further information on this (or any other points raised in this provisional decision) such as evidence of income and expenditure from the time that Ms B wishes to provide, I would invite her to do so in response to this provisional decision.

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

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

Ms B says she wasn't 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 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 Ms B sufficient information, in good time, on the various charges she could have been subject to as a Fractional 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 Ms B has not persuaded me that they would not have pressed ahead with their purchase had the finer details of the Fractional 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 fact and circumstances.

Did the commission arrangements render the credit relationship unfair?

My reading of the Supreme Court's judgment in Hopcraft, Johnson and Wrench is that it sets out principles which can apply to credit brokers other than car dealer–credit brokers. So I've taken into account those principles when considering the allegations of undisclosed payments of commission in this complaint.

In Hopcraft, Johnson and Wrench the Supreme Court ruled that, in each of the three cases, 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:

- *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"[1];*
- *The failure to disclose the commission; and*
- *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:

- *The size of the commission as a proportion of the charge for credit;*
- *The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);*
- *The characteristics of the consumer;*
- *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*
- *Compliance with the regulatory rules.*

After careful consideration, I don't think Hopcraft, Johnson and Wrench assists Ms B 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 the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Ms B. Nor have I seen anything that persuades me that the commission arrangements between her gave the Supplier a choice over the interest rate that led Ms B into a credit agreement that cost disproportionately more than it otherwise could have.

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[1] *Hopcraft, Johnson and Wrench* (para 327).

I recognise that it's possible 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 her. But as I noted in my provisional decision, case law on section 140A makes clear that regulatory breaches do not automatically lead to an unfair credit relationship, and that such breaches and any consequences must be considered in the round rather than in a narrow or technical way.

With that being the case, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, I'm not minded to think any such failure is itself a reason to find the credit relationship in question unfair to Ms B. I say this for the following reasons.

In stark contrast to the facts in Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging Ms B' Credit Agreement wasn't high. At £375.57, it was only 2.5% of the amount borrowed and only 2.32%% as a proportion of the charge for credit, which is the calculation the Supreme Court used.

Had Ms B known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at this level, I'm not currently persuaded that she either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Ms B wanted Fractional 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 she 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 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. As it wasn't acting as an agent of Ms B 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.

I don't consider it necessary for me to take into account any commission the Supplier might have paid to its sales representatives, or that this should be disclosed or factored into any calculation used to determine unfairness. Even if any such arrangement were in place (and I make no finding in this respect), its disclosure and/or payment would be further removed from any obligations the Supplier might have held, and even less likely to have an impact on Ms B's decision to enter into the Credit Agreement.

Overall, I'm don't intend to conclude 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 Ms B.

So, given all of the factors I've looked at here and having taken all of her into account, I'm not persuaded that the credit relationship between Ms B and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

Commission: alternative grounds of complaint

I'm conscious that there might be some alternative grounds that could constitute separate and freestanding complaints to Ms B' allegation of an unfair credit relationship.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because the Supplier took a payment of commission from the Lender without telling Ms B (that is, secretly). But given I'm not persuaded the Supplier – when acting as credit broker – owed Ms B a fiduciary duty, I can't see how I could properly uphold on this ground.

The second relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the

Supplier. As I've said, it's possible that the Lender failed to follow the relevant regulatory guidance. But I don't think any such failure on the Lender's part leads to my awarding compensation to Ms B because, for the reasons I also set out above, I think Ms B would still have taken out the loan to fund her purchase at the Time of Sale had the commission arrangements been adequately disclosed at that time.

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

Other matters

Ms B has complained strongly about having the credit agreement here defaulted and the Lender putting information on her credit file to reflect this. It seems at least possible that with the number of timeshares Ms B bought from the other supplier and her complaints about those to the Lender here (and other Lenders) there is the possibility of some confusion. And indeed in Ms B's complaint form to this service she says:

"The timeshare (2016) was traded for an (the 2017) timeshare, and given the complaints regarding this, the agreement was inextricably linked. As a result of the dispute in 2022 I paused the loan repayment for account (Ms B quotes the account number for this credit agreement related to the 2016 timeshare purchase). The outcome of the ombudsman complaint made on 30/12/2022 was found in my favour for the loan account (Ms B quotes the account number for this credit agreement relating the 2016 purchase)."

However it is clear from the evidence that Ms B's quoted comment above that her complaint about this loan was successful is erroneous. It is clear her complaint that was successful was with regard to a different loan for the different supplier she had a relationship with from 2017 onwards (albeit with this Lender) not the 2016 loan she references.

And in any event just because the timeshare memberships are linked, that is she traded in her 2016 timeshare for her 2017 timeshare this does not mean that the management of the two loans that Ms B had with the Lender here were linked. They were two separate loans for different purchases and were 'stand-alone'- they were not linked. So Ms B's own words showing that she 'paused the loan repayment' indicates that she deliberately didn't pay due to the erroneous belief that the management of the loans was linked. I don't see any failing by the Lender here.

It is also clear from the statements I've seen from the Lender here that Ms B took out this credit agreement to buy this timeshare in 2016 and made regular payments to it until well into 2022. So it's clear that she understood that despite trading in this timeshare membership in 2017 that she still had to service this loan. I say this because she paid for it between 2017 and 2022.

I've seen letters from the Lender to Ms B in 2022 telling her of her arrears and the need to pay. And I've seen the default letter it sent Ms B before defaulting her. I appreciate Ms B started up making payments again in 2022 including a significant payment (apparently to eliminate the outstanding arrears). I also appreciate that other complaints about other timeshares were successful and redress for those were paid. However I've not seen any failing by the Lender regarding this credit agreement or the management of it throughout, so I don't think it needs to do anything further with regard either the default or the information on Ms B's credit file.

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 Ms B Section 75 claim. 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.

I didn't find any of the arguments put forward demonstrated that the credit agreement between Ms B and the Lender was unfair to her under section 140A of the CCA. Absent any other reason why it would be fair or reasonable to direct the Lender to compensate Ms B, I said I didn't propose to uphold the complaint.

Responses to my provisional findings

The Lender accepted my provisional decision. Ms B didn't accept the proposed outcome and provided further arguments on the matter. Having received and reviewed these, I'm now proceeding with my final decision.

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. But I would add that the following regulatory rules/guidance are also relevant:

<u>The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance</u>

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]

<u>The FCA's Principles</u>

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.

After considering the case afresh and having regard for what's been said in response to my provisional decision, I find it offers no persuasive reason to depart from the conclusions I've previously set out. Accordingly I'm adopting the findings already quoted above for the reasons given. So I'll only comment on Ms B's key and relevant arguments as I see them (and in the order she makes them).

Ms B says the loans were inextricably linked. They weren't. One did not refinance the other, they ran side by side. So no unfairness stemming from the first loan 'polluted' (for want of a better word) the second loan. And as I said earlier:

It is also clear from the statements I've seen from the Lender here that Ms B took out this credit agreement to buy this timeshare in 2016 and made regular payments to it until well into 2022. So it's clear that she understood that despite trading in this timeshare membership in 2017 that she still had to service this loan. I say this because she paid for it between 2017 and 2022.

The Lender isn't responsible for the actions of Ms B's solicitor. It is only responsible for its actions or inactions and under the relevant sections of the CCA the actions of a supplier where applicable.

Ms B points to S32 of the CCA but has demonstrated no such concealment. So I don't think this is persuasive. Neither has she shown that the Supplier has caused her loss through liquidation. As I said:

For completeness I should add that Ms B has latterly pointed out that the Supplier has gone into liquidation and thus she's lost out. Firstly I'm not satisfied that this is necessarily the case as, although there have been alterations within the group of companies of which the Supplier is a member, this hasn't stopped it providing members the holiday benefits which they purchased. And in any event Ms B stopped having a membership with this Supplier in February 2017 when she traded this membership in to the different supplier. So she's still out of time under the Limitation Act.

Ms B says a 'default should not be recorded where the debt is genuinely disputed and subject to regulatory adjudication'. I don't concur with Ms B's assertion. And Ms B paid it for many years as she clearly knew it was to pay for her membership which she took out and utilised.

Re affordability Ms B points to the Lender having to do the proper checks. But I only need to make the Lender redress the matter if it was unaffordable or irresponsible. And as there's no persuasive evidence of this then I see no reason to make the Lender do anything to remedy a failing and consequent loss which haven't been demonstrated. And this is despite my direct invitation in my provisional decision to provide evidence on this point to Ms B-which she hasn't done.

Latterly Ms B points to the failings of a professional representative which she wishes to evidence, but the Lender isn't responsible for the failings of such a professional representative. So I see nothing to be gained in this matter by not bringing finality to the matter now.

In summary I've considered the Lender's obligations here both directly, under Section 75 and whether there is an unfair credit relationship with her under Section 140A of the Consumer Credit Act 1974 and more broadly. I've considered commission and whether the Lender should be responsible for any relevant failings by the Supplier such as breaches of regulations. And I've considered the complaint issues she's raised with the Lender and all in all I'm satisfied on balance of probabilities that there is nothing for the Lender to do here. Accordingly Ms B's complaint is unsuccessful.

My final decision

It is my final decision that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 12 May 2026.

Rod Glyn-Thomas
Ombudsman