

## The complaint

Mr C and Mrs C complaint is, in essence, Clydesdale Financial Services Limited, trading as Barclays Partner Finance, (the 'Lender') acted unfairly and unreasonably by (1) being party to unfair credit relationship with them 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

Mr C and Mrs C were speaking to a timeshare provider (the 'Supplier') in October 2015. They purchased a timeshare with finance from another finance company (the 'Other Finance Company'). They borrowed from the Lender here (the 'Credit Agreement') to refinance a debt of £17694 with a third party (the 'Third Party').

Mr C and Mrs C – using a professional representative (the 'PR') – wrote to the Lender on 07 November 2024 (the 'Letter of Complaint') to raise a number of different concerns about the sale of the timeshare membership. 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 C and Mrs C's concerns as a complaint about timeshare and rejected it on every ground in its letter of 05 March 2025.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who didn't uphold the complaint.

The PR disagreed and gave its reasons for doing so and accordingly this case was appropriate for an Ombudsman's decision – which is why it was passed to me.

I issued a provisional decision dated 19 March 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 considered the above I do not think this complaint should be upheld. Crucially I have to make a finding here contrary to the basis on which this complaint has been presented by the PR here and contrary to how the Lender considered the PR's complaint. Throughout this dispute it seems clear that both the PR and the Lender have considered the matter on the basis that the Credit Agreement in this complaint funded the purchase of the timeshare Mr C and Mrs C purchased on the same day. It is clear to me that it did not. I shall explain why.*

*Firstly the credit agreement amount on this credit agreement does not match the price of the timeshare. The finance from Other Finance Company does match the price of the timeshare (which is dealt with by me in a separate complaint as the PR is aware).*

*The credit agreement here does however match the amount of the finance provided by the Third Party which was to be refinanced.*

*Both the sales documentation and Mr C and Mrs C's statement show that two sets of finance from two providers were to be used for Mr C and Mrs C. And the Lender and the Other Finance Company were both named on the sales documentation. And it is clear from the Loan Consolidation Instruction document how much was to be refinanced with the Third Party giving the amount (the same as the finance here) and the account number.*

*Accordingly I'm satisfied that this credit agreement did not fund the purchase of the timeshare that Mr C and Mrs C purchased on this day. This credit agreement did finance the consolidation of the lending from the Third Party.*

*I should add that I've issued a decision on the complaint by Mr C and Mrs C about the Other Finance Company, so I have seen the evidence from 'both sides of the fence' as it were, in that I'm satisfied that the Other Finance Company did finance the purchase of the timeshare.*

*Accordingly as this finance from the Lender here didn't finance the purchase of the timeshare, I cannot uphold a complaint about that timeshare purchase against this Lender as it didn't fund the contract of purchase for the timeshare.*

*I should also note that the PR here didn't complain to the Lender about the Lending in this complaint regarding this credit agreement. So I cannot consider that issue here as the Lender never answered that complaint because it was never made in the Letter of claim.*

### **Commission**

*The PR also says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint about this credit agreement 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 C and Mrs C in arguing that their credit relationship with the Lender was unfair to them, for reasons relating to commission given the facts and circumstances of this complaint.*

*As the Supreme Court said in paragraph 326 of its judgment in Hopcraft, Johnson and Wrench, it's not possible to simply apply the reasoning of the Supreme Court in Plevin v Paragon Personal Finance Ltd [2014] UKSC 61 ('Plevin') to this complaint (as the PR does) when it's concerned with a product and marketplace that were very different to those in Plevin. What's more, Mr C and Mrs C was provided with information as to the cost of the Credit Agreement (interest rate, fees, APR and monthly repayments). So, they were at least in a position from which they could understand the cost of the Credit Agreement and compare it with other options that might have been available at the Time of Sale.*

*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 C and Mrs C, 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 C and Mrs C 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 C and Mrs C.*

*In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mr C and Mrs C entered into wasn't high. At £442.50, it was only 2.5% of the amount borrowed and even less than that (1.2%) as a proportion of the charge for credit - which was the figure the Supreme Court used.*

*So, had they known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr C and Mrs C wanted to refinance and at such a low level, the impact of commission on the cost of the credit they wanted doesn't strike me as disproportionate. So, I think they would still have taken out the loan at the Time of Sale had the amount of commission been disclosed bearing in mind the ease and flexibility of this finance.*

*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. And as it wasn't acting as an agent of Mr C and Mrs C but as the supplier of contractual rights they obtained under the separate Purchase Agreement, the*

*transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to their when arranging the Credit Agreement and thus a fiduciary duty.*

*Overall, therefore, 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 C and Mrs C.*

### **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 Mr C and Mrs C and the Lender under the Credit Agreement was unfair to them. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.*

### **Commission: The Alternative Grounds of Complaint**

*While I've found that Mr C and Mrs C credit relationship with the Lender wasn't unfair to them for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Mr C and Mrs C's complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.*

*The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr C and Mrs C (i.e., secretly). And 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 them.*

*However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr C and Mrs C a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to them. And while it's possible that the Lender failed to follow 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, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think they would still have taken out the loan to fund this refinancing at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.*

### **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 Mr C and Mrs C's complaints about the outcomes of their claims about the timeshare purchase. 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 C and Mrs C.*

### **Responses to my provisional findings**

The Lender accepted my provisional decision. The PR didn't accept the proposed outcome. It made further submissions in support of Mr C and Mrs C's position. Having received and reviewed these, I'm now proceeding with my final decision.

In doing so, I'm conscious that the PR has made a series of assertions surrounding the provision of information. These include, requesting that the information we have received be shared with it in full, and asking that we do not proceed with a decision before this is done and it has had an opportunity to make further submissions. The PR's requests have been addressed by us under separate correspondence. For reasons I will explain in the course of this decision, I've concluded that it's appropriate for me to proceed with my determination.

### **The legal and regulatory context**

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.

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. I’ll explain why.

The PR says I’ve artificially separated a single transaction here. I disagree. In cases such as these, lenders are responsible for their lending decisions and their responsibilities under the CCA which flow from failings of suppliers with regard to contracts which the Lender funds. This Lender didn’t fund the timeshare purchase of October 2015 and doesn’t hold any responsibility for it under the law, so it would be unfair for it to be held responsible for that purchase, particularly where another Lender is responsible for it and the PR has known this for some years and which has been dealt with by this service separately.

The PR says that this “timeshare agreement plainly constitutes a related agreement” under the CCA. I’m not persuaded that that is the case considering S19 of the CCA but in any event the letter of claim sought only to make S140 and S75 claims regarding the timeshare purchase of October 2015 against this lender. However this Lender didn’t fund that purchase. So clearly it would be unfair to hold this Lender responsible for a contract to purchase the timeshare purchased in October 2015 which it wasn’t a party to, didn’t fund and for which a different Lender is responsible for.

Clearly this Lender can be held responsible for this lending decision regarding the credit relationship it has with Mr C and Mrs C but as it was refinancing borrowing that Mr C and Mrs C had with a third party lender, and as I’ve seen no claim made to this Lender regarding

the timeshare purchased which the third party lender financed (i.e. pre October 2015), I don't think the Lender here has done anything wrong by not answering such a claim.

The PR says "*It is incorrect to state that the lending itself was not complained of.*" Yet there is no reference in the letter of claim to the lending being unaffordable to Mr C and Mrs C or that it was irresponsible for any particular reasons. Nor is there any wording showing why the lending decision was incorrect and nor is there any evidence provided by the PR showing that this borrowing was unaffordable or irresponsible at the time this lending decision was made (such as evidence of income and expenditure of Mr C and Mrs C at the time the credit was advanced to Mr C and Mrs C).

So even if I take a broad interpretation of the wording of the Letter of claim I'm not persuaded I can decide the lender made a mistake in not dealing with a lending complaint therein. And in any event as the PR has not provided any persuasive evidence that the lending was unaffordable or irresponsible, I can't, on balance, decide that Mr C and Mrs C have lost out as a result. And accordingly there is nothing for the Lender to remedy from a lending perspective as no loss has been evidenced by the PR or which is evident from the evidence available.

Lastly the PR repeats many complaints about the supplier's actions with regard to the timeshare membership purchased in October 2015 which has already been considered against that Lender that funded that membership. But as this Lender didn't fund that membership then I see nothing to be gained by saying any more on the merits of that timeshare sale.

So all things considered I'm not persuaded that this complaint should succeed.

### **My final decision**

It is my final decision not to uphold this complaint for the reasons given.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 19 May 2026.

Rod Glyn-Thomas  
**Ombudsman**