

## The complaint

Mrs H complains that Clydesdale Financial Services Limited (“BPF”) granted her a fixed sum loan agreement (“agreement”) that was unaffordable for her and that the goods supplied to her under that agreement were misrepresented to her.

## What happened

Mrs H has had some assistance in bringing her complaint to our service by a third party. But for ease I will simply refer to Mrs H in this decision, rather than both Mrs H and the third party.

In March 2014 Mrs H purchased a boiler costing of £20,950 from a company that I will call “E”. As well as supplying and fitting the boiler, E (on Mrs H’s behalf) brokered the agreement granted by BPF.

Under the terms of the agreement, everything else being equal, Mrs H undertook to pay £950 to E (by way of an advance payment/deposit) and 120 monthly payments of £259.18 to BPF, making a total repayable of £32,051.60 at an APR of 10%.

In July 2020 Mrs H complained to BPF – under section 75 of the Consumer Credit Act 1974 (“section 75”) – that the boiler had been misrepresented to her by E, inducing her into purchasing it. And that the agreement it had granted her (for the purchase of the boiler) was unaffordable from the outset.

In August 2020 BPF issued Mrs H with a final response letter (“FRL”). Under cover of this FRL BPF said:

*“...we have no obligation to investigate the points you have raised.*

*This is because the Limitation Act 1980 deems that complaints regarding goods/services and the associated finance acquired are time barred after a six year period.*

*...your complaint is time-barred and the Ombudsman is therefore unable to consider this complaint.*

*Despite the above, we are sympathetic to your situation and, as a gesture of goodwill, we are prepared to look into the affordability of the loan...on receipt of copies of your bank statements from 1 January 2014 to 31 December 2014...”*

In September 2020, and unhappy with BPF's FRL, Mrs H referred her complaint to our service for investigation.

In December 2020 BPF confirmed to our service that, in its view, we had no jurisdiction (on the grounds of time) to consider Mrs H's complaint and to date it hadn't received copies of her bank statements for 2014.

In July 2021 one of our investigators contacted BPF to say that in her view Mrs H's complaint about its decision not to consider ("decline") her section 75 claim was (on the grounds of time) something we had the jurisdiction to consider.

In December 2021, and having obtained Mrs H bank statements for 2014, the investigator asked BPF to reconsider Mrs H's complaint about the agreement being unaffordable from the outset.

In December 2021 BPF confirmed to our service that it believed the agreement wasn't unaffordable for Mrs H (from the outset). But in any event, this aspect of Mrs H's complaint was, in its view, out of our jurisdiction on the grounds of time.

In January 2022 our investigator issued her view on Mrs H's complaint. In summary she concluded that BPF had done nothing wrong in declining Mrs H's section 75 claim and her complaint about the agreement being unaffordable was something our service (on the grounds of time) indeed had no jurisdiction to consider.

In January 2022 Mrs H confirmed to our service that she didn't accept the investigator's view and would like her complaint considered by an ombudsman. She also said that she would provide "*further reasons why she [wanted] to challenge the [investigator's view in due course]*".

In June 2022, and having heard nothing further from Mrs H, the investigator wrote to both parties to say the complaint would now be passed to an ombudsman for review and decision and that:

*"We should already have all the information [needed] to reach a decision...If you have any further points or information you'd like [us] to consider, please send these to [us] by 6 July 2022."*

### **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.

Having done so I'm satisfied that the investigator came to the right outcome.

First, I would like to point out that I'm aware that Mrs H said she would like to provide, and would be providing, further information in support of her complaint. But I'm satisfied she has already had enough time to do so and I don't think anything further is needed for me to be able to fairly and reasonably decide this complaint. Therefore, I see no good reason to delay the issue of this decision. I would also add that our service needs to be fair to both parties to a complaint and we can't keep complaints open indefinitely.

The rules applying to this service say that, where a business doesn't consent (as BPF doesn't in this case), I can't consider a complaint made more than six years after the event complained of, or if later, more than three years after the complainant was aware, or ought reasonably to have been aware, of cause for complaint. Dispute Resolution rule 2.8.2R can be found online in the Financial Conduct Authority's handbook. Or we can provide a copy on request.

Mrs H purchased the boiler, and signed the agreement, in March 2014. So, with this in mind and given that Mrs H didn't refer her complaint to our service until September 2020 (and to BPF until July 2020), it follows that this complaint has been made more than six years after the event being complained about.

That means I need to consider whether Mrs H complained to our service within three years of when she was aware, or ought reasonably to have been aware, she had grounds to do so.

Having considered what Mrs H has said and submitted very carefully, I'm satisfied (like the investigator) that she was aware, or ought to reasonably have been aware, of cause for this aspect of her complaint by mid-2015, one year after her agreement payments had started. So, this means that for this complaint to have been referred to our service in time under this 'test' she needed to have referred it by mid-2018 but didn't do so until 2020.

I'm allowed to investigate complaints made outside the time limits where I'm satisfied the failure to comply with the time limits was as a result of exceptional circumstances. But I haven't seen any information to show this happened.

I appreciate Mrs H will be disappointed, but I agree with the investigator that this aspect of her complaint has been made to our service too late to be considered by us.

I will now turn to the second aspect of Mrs H's complaint, this being that BPF was wrong to decline her section 75 claim.

When considering what's fair and reasonable, I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Given Mrs H's complaint is about a claim made against BPF under section 75 naturally this constitutes relevant law. But what is also relevant law is the Limitation Act 1980 ("LA") and what is relevant regulatory rules, guidance and standards is the Financial Conduct Authority's Principle 6 which states:

*"A firm must pay due regard to the interests of its customers and treat them fairly".*

The LA is the law which sets out the time limits which apply to different causes of action that a party can pursue.

As Mrs H's right to claim against BPF under section 75 is on the same basis of her right to make a claim against E, I consider the relevant time limits set out in the LA are:

- Section 2 which applies to causes of action founded in tort law – which includes claims for misrepresentation.
- Section 9 which applies to causes of actions for sums recoverable by statute.

Section 2 of the LA states:

*“An action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued”.*

For me to determine whether a claim was brought within six years, I have to decide when the cause of action, or damage, took place. The damage is the financial loss arising as a result of the misrepresentation.

In this case Mrs H says what she was told by E about the boiler was what induced her to make the purchase and to enter the agreement.

So, Mrs H's financial loss occurred when she contracted to pay £20,950 for the boiler with E and when she entered into the agreement with BPF for the same in March 2014.

Mrs H raised her claim with BPF in July 2020 which is more than six years from when the damage occurred, and her cause of action accrued.

Section 9 of the LA states:

*“An action to recover any sum recoverable by virtue of any enactment shall not be brought after the expiration of six years from the date on which the cause of action accrued.”*

I've considered this section because the basis of Mrs H's claim against BPF is under section 75 and so is a sum recoverable by virtue of enactment (statute law from an act of parliament). But I'm not persuaded this changes the position compared to the other provisions in the LA. Section 75 makes the lender jointly and severally liable for a supplier's misrepresentation – effectively making BPF step into the shoes of E.

This means that the limitation period under section 9 is the same as under section 2 and gives rise to effectively the same cause of action.

In this decision I'm considering whether BPF has acted in a fair and reasonable manner when dealing with Mrs H's section 75 claim. It's for the courts to ultimately decide whether or not any right to claim against E (and so BPF) has expired under the LA. But given the information available and representations made by both parties, I'm satisfied BPF has applied the rules fairly and made a reasonable decision.

I accept that Mrs H might not have been aware of any time limits that would affect her ability to make a claim. But because the time limits are set out in law – I can't say it's unreasonable for BPF to apply them.

I've not seen any evidence to show Mrs H was unable to make a claim within time, and so I can't fairly ask BPF to do anything else now. I realise this will come as a disappointment to Mrs H, but I can assure her I've considered everything impartially.

**My final decision**

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 11 October 2022.

Peter Cook  
**Ombudsman**