

The complaint

Mr R's complaint is, in essence, that Clydesdale Financial Services Limited, trading as Barclays Partner Finance ('BPF'), acted unfairly and unreasonably by deciding against paying a claim under Section 75 of the Consumer Credit Act 1974 ('CCA').

What happened

Mr R purchased a timeshare on 9 November 2009 (the 'Time of Sale') from a third party (the 'Supplier'). He used a loan from BPF (the 'Credit Agreement') to help pay for the timeshare before repaying the Credit Agreement in full on 13 February 2012.

Mr R contacted BPF on 31 March 2020 to complain about misrepresentations by the Supplier at the Time of Sale giving him a claim under Section 75 of the CCA. After waiting some time for BPF to respond, Mr R referred a complaint to the Financial Ombudsman Service on 21 September 2020 that BPF had not properly considered his claim.

BPF dealt with Mr R's claim as a complaint and issued its final response letter on 7 October 2020 rejecting it on the basis that there was a defence to the complaint under the Limitation Act 1980 (the 'LA').

The complaint was looked at by an investigator who saw no reason to uphold it. But, as Mr M disagreed with the investigator's assessment and asked for an ombudsman's decision, it was passed to me to review afresh.

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 conclude that BPF didn't act unfairly or unreasonably by coming to the decision it did. I'll explain why.

Taking everything into account, I don't think it would be fair or reasonable to uphold this complaint for reasons relating to Mr R's Section 75 claim. As a general rule, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the LA as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court. So, it is relevant to consider whether Mr R's Section 75 claim was time-barred under the LA before he put it to BPF.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim the consumer could make against the Supplier.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued (see Section 2 of the LA).

But a claim, like the one in question here, under Section 75 is also “an action to recover any sum by virtue of any enactment” under Section 9 of the LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was the Time of Sale. I say this because Mr R entered into the purchase of the timeshare at that time based on the alleged misrepresentations of the Supplier – which he says he relied on. And, as the loan from BPF was used to help finance the purchase, it was when he entered into the Credit Agreement that he purportedly suffered a loss.

BPF was first notified of Mr R’s Section 75 claim on 31 March 2020. And, as more than six years had passed between the Time of Sale and when he first put his claim to BPF, I don’t think it was unfair or unreasonable of BPF to reject Mr R’s concerns about the Supplier’s alleged misrepresentations.

More recently, Mr R argues that under s.8 LA, the actual time limit is twelve years. This provision covers actions on a specialty. I don’t think Mr R’s agreements with the Supplier and BPF were anything other than simple contracts, and not specialties. But if I’m wrong about that, it was held in *Green v Eadie and others* [2011] EWHC B24 (Ch) that any claim brought under s.2(1) of the Misrepresentation Act 1967 fell within s.2 or 9 LA, and this meant the six-year limitation period was to be used and not the twelve-year period specified in s.8. As such, I’m not persuaded that these provisions of the LA apply to his claim or serve to extend the time in which he had to make it.

Mr R also argues he first contacted BPF in 2015 to complain about having been mis-sold the timeshare. But he hasn’t provided any supporting evidence of that. And, having reviewed BPF’s internal contact notes from the time (which do show that Mr R complained in March 2020), I can’t see anything to suggest he complained in, or around, 2015.

My final decision

For the reasons set out above, I don’t uphold the complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 23 April 2025.

Nimish Patel
Ombudsman