

The complaint

Mr H complains that he was mis-sold a holiday club product and the loan used to pay for it. The loan was provided by Clydesdale Financial Services Limited, which trades as Barclays Partner Finance and which I'll refer to as "BPF". Mr H is represented by a claims management business, which I'll call "F", so any references to his submissions include those made on his behalf.

What happened

Mr and Mrs H had been timeshare owners with Club Infiniti, a timeshare and holiday club, since 2009. In July 2014 they bought from Leisure Dimensions Limited, a company registered in Ireland, 20,000 Club Infiniti points at a cost of £4,500. Mr and Mrs H could trade the points on an annual basis for holiday accommodation at various resorts linked to or operated by Club Infiniti. The purchase was funded by a 10-year loan provided to Mr H by BPF.

In 2021 Mr H contacted BPF to say that he thought the timeshare points and the loan had been mis-sold. In summary, he raised the following issues:

- pressure selling;
- affordability of the loan;
- misrepresentation; and
- unfairness of the relationship with BPF

BPF did not accept Mr H's claims, primarily because of the time which had passed since the events complained of. Mr H did not agree with BPF and referred the matter to this service.

One of our investigators considered what had happened and issued a preliminary assessment. The investigator did not recommend that the complaint be upheld. Mr H did not accept that assessment and asked that an ombudsman review the case.

I did that and issued a provisional decision, in which I said:

The complaint about suitability and the credit assessment

Before agreeing to provide credit to a borrower, a lender should assess whether that credit is appropriate and affordable. What exactly a lender should do depends on the circumstances, and rules, regulations and guidance have changed over time. Mr H says however that BPF did not carry out appropriate checks in September 2014.

Our own rules say that we cannot generally consider a complaint unless it is referred to us within six years of the event complained of or, if later, within three years of the date on which the complainant knew, or ought reasonably to have known, that he had cause for complaint.

The event complained of in this case is the credit assessment that BPF carried out (or did not carry out) in September 2014. Mr H did not however suggest until October 2021 – more

than seven years later – either that the loan was not affordable or that proper checks had not been made. It is at least arguable therefore that this service has no power to consider this part of the complaint, because it was referred to more than six years after the event complained of.

Even if I were to take a different view on that point, however (perhaps because Mr H did not know the extent of BPF's obligations when agreeing to the loan) I have seen no evidence that the loan was not affordable. It appears that payments have been made in full and on time. That does not necessarily mean that BPF carried out all the checks it should have made, but it does suggest that additional checks are unlikely to have resulted in a different outcome – the loan is likely to have been agreed in identical or very similar terms in any event.

Sections 56 and 75 of the Consumer Credit Act 1974

Under section 56 of the Consumer Credit Act, statements made by a supplier in relation to a transaction financed or proposed to be financed under pre-existing arrangements between a credit provider and the supplier are deemed to be made as agent for the creditor.

In addition, one effect of section 75(1) of the Consumer Credit Act is that a customer who has a claim for breach of contract or misrepresentation against a supplier can, subject to certain conditions, bring that claim against a credit provider. Those conditions include:

- that the credit financed the contract giving rise to the claim, either in whole or in part; and*
- that the credit was provided under pre-existing arrangements or in contemplation of future arrangements between the credit provider and the supplier.*

The supplier here was Leisure Dimensions Limited, the company which sold the points and associated club membership. A different company was named as the credit intermediary, but I accept that BPF had sufficiently close links with the seller that sections 56 and 75 could apply. I have therefore considered what Mr H has said about the sale and subsequent events.

Misrepresentation

A misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue and which induces the other party into the contract.

Mr H's allegations are largely vague and unsupported by any evidence, either of what was said or that it was untrue.

Be that as it may, under the Limitation Act 1980 an action (that is, court action) based on misrepresentation cannot generally be brought after six years from the date on which the cause of action accrued. Any statements which might have induced Mr and Mrs H into the contract for the purchase of holiday club points in September 2014 were made on or before 9 September 2014; since they were already club members, it's possible that Mr and Mrs H relied on what they were told or their own experiences even before that. They did not

however raise any complaint with BPF until October 2021, more than seven years later. I think it very likely therefore that a court would conclude that any claim for misrepresentation against the seller would by then have been outside the time limit in the Limitation Act.

I stress that it is not for me to decide whether any underlying claim is now out of time under the Limitation Act. Rather, I must decide whether the response of BPF to the claim under

section 75 was reasonable. Given the real possibility that a court would say that the underlying claims are time-barred, I think it was.

Section 140A claims

Under section 140A and section 140B of the Consumer Credit Act a court has the power to consider whether a credit agreement creates an unfair relationship and, if it does, to make appropriate orders in respect of it. Those orders can include imposing different terms on the parties and refunding payments.

Only a court can make orders under sections 140A and 140B. An ombudsman has no power to do so. In deciding what's fair and reasonable, I must however take into account any relevant law. And I do have wide powers to make a range of awards – which might include, for example, requiring a lender to waive interest on a loan, or to suspend or refund loan payments. I do not believe however that there is any reason for me to do that here.

As I noted in respect of Mr H's claim under section 75 of the Consumer Credit Act, he has provided little or no evidence to support his assertions about the sale or of the timeshare product. F's response to the investigator's assessment was largely a discussion of the operation of the Infiniti Club over a number of years. It did not address Mr and Mrs H's specific experiences, still less provide any evidence of them. So, for example, F said that accommodation had been of a poor standard, but there is no evidence of Mr and Mrs H ever raising that with the resort; nor are there, for example, any photographs to support the allegation.

I indicated that I would consider any further evidence or arguments which the parties wanted to submit before issuing a final decision, and gave a deadline of 17 January 2024. BPF said it had nothing to add. Mr H has not responded to my provisional 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.

I indicated in my provisional decision that Mr H's complaint about the affordability of the loan might be out of time under our own rules. To the extent however that Mr H's complaint is that BPF's failure properly to consider affordability meant that the loan agreement created an unfair relationship which BPF has not addressed, the relevant limitation period begins when the loan is repaid. Be that as it may, it remains the case that Mr H has provided no evidence in support of the allegation that the loan was not affordable, so I see no reason to reach a different conclusion about this part of his complaint.

Indeed, as I have received no further information in response to my provisional decision, I have not changed my overall conclusions on the other issues raised by Mr H. In saying that, I stress that I have considered everything afresh before issuing this final decision.

My final decision

For these reasons, my final decision is that I do not uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 April 2024.

Mike Ingram

Ombudsman