

## **The complaint**

Mrs F'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**

Mrs F purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 16 July 2012 (the 'Time of Sale'). Mrs F, and a third-party I'll refer to as Mr B, entered into an agreement with the Supplier to buy 4,140 fractional points at a cost of £7,628 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mrs F more than just holiday rights. It also included a share in the net sale proceeds of a property named on her Purchase Agreement (the 'Allocated Property') after her membership term ends.

Mrs F paid for her Fractional Club membership by taking finance of £7,628 from the Lender (the 'Credit Agreement') in her sole name.

Mrs F – using a professional representative (the 'PR') – wrote to the Lender on 1 March 2021 (the 'Letter of Complaint') to raise a number of different concerns. Since then the PR has raised some further matters it says are relevant to the outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

Mrs F ultimately referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint that the Lender ought to have accepted a claim made under Section 75 of the CCA on its merits. The Investigator felt the complaint that there was an unfair credit relationship under Section 140A, and that the lending was unaffordable for Mrs F, hadn't been made in time as per the rules this service must follow and that it couldn't be considered.

The Lender agreed with the outcome and had no further comments to add.

Mrs F disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. Since then, the PR has accepted the Investigator's findings on this service's remit to consider the complaint, and seeks only to challenge the Investigator's findings on its remaining merits.

## **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 the complaint should not be upheld. I'll explain why.

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 Limitation Act 1980 (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 Mrs F's Section 75 claim for misrepresentation was time-barred under the LA before she put it to the Lender.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim Mrs F 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 Mrs F entered into the purchase of her timeshare at that time based on the alleged misrepresentations of the Supplier – which she says were relied upon. And as the loan from the Lender was used to help finance the purchase, it was when she entered into the Credit Agreement that she suffered a loss.

Mrs F first notified the Lender of her Section 75 claim on 1 March 2021. And as more than six years had passed between the Time of Sale and when that claim was first put to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mrs F's concerns about the Supplier's alleged misrepresentations.

The PR has argued that the limitation period can be extended in cases of concealment or fraud. There are provisions within the LA to extend limitation periods in such circumstances. However, I don't think the PR's arguments assist the claim because, for example, the PR's allegation of concealment of the product being an investment is inconsistent with another of the PR's allegations that the Supplier promoted the product to Mrs F as an investment.

In any event, there may be another reason why it wasn't unfair for the Lender not to accept Mrs F's claim. That's because certain conditions must be met if the protection afforded to consumers under Section 75 is engaged, including, for instance, regarding the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. Section 75(3)(b) says this protection does not apply if:

*'the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000.'*

In this case we have the pricing sheet from this purchase which shows the purchase price of the membership – before deductions for the trade-in of existing timeshare points – as being £62,899. Accordingly, it would appear that the misrepresentation claim under Section 75 of the CCA isn't within the financial limits set by the CCA. And so, any Section 75 claim made to the Lender cannot be successful as liability does not attach to the Lender for any misrepresentations by the Supplier under this provision.

**My final decision**

For these reasons, my final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 4 March 2026.

Nimish Patel  
**Ombudsman**