

## The complaint

Mr S has complained that Clydesdale Financial Services Limited, trading as Barclays Partner Finance ("BPF"), acted unfairly and unreasonably by being a party to an unfair debtor-creditor relationship with him under s.140A of the Consumer Credit Act 1984 ("CCA") and deciding against paying a claim under s.75 CCA.

## What happened

Mr and Mrs S bought a number of different timeshare memberships from a timeshare provider ("the Supplier") over a number of years.

In June 2010, Mr and Mrs S took out a 'trial membership' from the Supplier, which enabled them to take a number of weeks holidays at the Supplier's resorts to see if they wished to take out full memberships in the future. After which, they took out four further purchases:

- (1) August 2010 - membership of the Supplier's 'points based' membership, paid for with a loan from BPF in Mr S's sole name. This loan was repaid in August 2011.
- (2) October 2010 - membership of the Supplier's 'points based' membership, paid for with a loan from BPF in Mrs S's sole name. This loan was repaid in March 2012.
- (3) October 2010 – an interest in a property in the USA provided by an American business associated with the Supplier. This was not paid for with a loan from BPF.
- (4) May 2012 - membership of the Supplier's Fractional Property Owners Club, paid for with a loan from BPF in Mr S's sole name. This loan was repaid in November 2013.

In November 2017, Mr and Mrs S used a professional representative ("PR") to make a claim against BPF on their behalf under the CCA. The claim in relation to the August 2010 purchase was made on the basis of a number of issues, but they included, amongst other things:

- The Supplier had misrepresented the nature of the timeshare to Mr and Mrs S, so BPF was jointly liable under s.75 CCA. These included being told that the points purchased could be sold back to the Supplier at any stage and that they would be able to stay at any resort in the world if they wished, including during school holidays. Both of these statements turned out to be untrue.
- Mr and Mrs S said that by 2012 they had tried unsuccessfully to book holidays at locations they wanted and they had to take holidays where the Supplier was able to provide accommodation.
- They also said that, by 2012, they were facing rising maintenance fee costs, a poorly performing product that they could not sell or dispose of that was a long-term liability. That was one of the reasons they traded in their points based memberships in 2012 to take out a Fractional Property Owners Club membership.
- Mr and Mrs S said that the rate of interest on the loan was significantly higher than they could get from other lenders, so they paid it off using other borrowing.
- The relationship between Mr S and BPF was unfair, as defined by s.140A CCA, due to the problems set out.
- The lending was advanced in breach of the Office of Fair Trading ("OFT") guidance on irresponsible lending.

BPF responded to say it did not accept the claims being made and rejected them on every ground. But it treated the claims as a complaint and said Mr and Mrs S could bring their complaint to our service. Unhappy with BPF's response, PR referred a complaint to our service on Mr and Mrs S's behalf. As Mr S is only able to bring a complaint about the loans in his name, this decision will only deal with the two loans taken in August 2010 and May 2012. But I will refer to Mr and Mrs S throughout.

After the complaint was with our service, BPF argued that any complaint made about the loan taken out in August 2010 had been made too late for this service to consider. With respect to the purchase made in May 2012, BPF made an offer to Mr S to settle his complaint – he accepted this offer, so I will not comment on that loan further.

One of our investigators considered the complaint in respect of the August 2010 purchase, but did not think BPF needed to do anything further. She thought the claim that there was a misrepresentation under s.75 CCA had been made too late under provisions of the Limitation Act 1980 ("LA"). She also thought that any complaint that BPF was a party to an unfair debtor-creditor relationship under s.140A CCA had been made too late for our service to consider. Finally, she originally thought there was no evidence that BPF had lent money irresponsibly to Mr S, but she then reconsidered this and thought this part of the complaint had also been made too late to be considered.

Mr and Mrs S responded to say they did not become aware they had real issues with their purchases until November 2015, when they tried to sell back their fractional membership points to the Supplier and found out they could not do so. This was also when they found out that the interest they had bought in the USA was not worth what they had paid for it. They said they were not aware that they could complain to BPF, but they only found that out when speaking to PR.

In this decision I will deal solely with the question of whether BPF acted fairly in turning down the claim made under s.75 CCA. I will consider the other complaints made in a separate decision.

### **What I have 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.

Mr and Mrs S said that the timeshare supplier misrepresented the nature of the membership to them when they bought it and that Mr S therefore has a claim for misrepresentation against the Supplier.

Under s.75 CCA, BPF could be jointly liable for the alleged misrepresentations made by the Supplier. But BPF argued that any claim brought by Mr S for any alleged misrepresentations was made too late. Having considered everything, I agree with what BPF has said. For the avoidance of doubt, I have not decided whether the limitation period has expired as that would be a matter for the courts should a legal claim be litigated. Rather, I have considered whether BPF acted fairly in turning down the claim.

Our service normally thinks it would be fair and reasonable for a creditor to rely on the LA as an answer to a claim under s.75 CCA. This is because it would not normally be fair to expect lenders to look into a claim that has been made outside of the limitation periods, so long after the liability arose and after a limitation defence would have become available in court.

So I think it is relevant to consider whether BPF has a limitation defence under the LA when thinking about a fair answer to Mr S's complaint.

It was held in Green v. Eadie & Ors [2011] EWHC B24 (Ch) that a claim under s.2(1) of the Misrepresentation Act 1967 is an action founded on tort for the purposes of the LA; therefore, the limitation period expires six years from the date on which the cause of action accrued (s.2 LA).

Here Mr S brought a like claim against BPF under s.75 CCA. The limitation period for the corresponding like claim would be the same as the underlying misrepresentation claim. As noted at para. 5.145 of Goode: Consumer Credit Law and Practice (Issue 68 (April 2022)) the creditor may adopt any defence which would be open to the supplier, including that of limitation:

*“There is no difficulty in treating the debtor’s rights under sub-s (1) as a “like claim” against the creditor. Since the creditor’s liability mirrors the supplier’s it follows that, to the extent that the supplier has successfully excluded or limited his liability, the creditor may shelter behind that exclusion or limitation. Conversely, the creditor’s right to repayment is so closely connected with the supply contract, and the debtor’s statutory rights under sub-s (1), that the debtor may assert a right of set-off in diminution or extinguishment of his liability to the creditor, and as a defence in proceedings brought by the creditor (with or without a counter-claim). Any attempt to exclude the right of set-off will fall foul of CCA 1974, s 173(1) (and would in any case fall within [section 13(1)(b) of the Unfair Contract Terms Act 1977])”*

Therefore, the limitation period for the s.75 CCA claim expires six years from the date on which the cause of action accrued.

The date on which a ‘cause of action’ accrued is the point at which Mr S entered into the agreement to buy the timeshare. It was at that time that he entered into an agreement based, he says, on the misrepresentations of the Supplier and suffered a loss. He says, had the misrepresentations not been made, he would not have bought the timeshare. And it was on that day that he suffered a loss, as he took out the loan agreement with BPF that he was bound to and would have never taken out but for the misrepresentations. It follows, therefore, that the cause of action accrued in August 2010, so Mr S had six years from then to bring a claim. But he did not make a claim against BPF until November 2017, which was outside of the time limits set out in the LA. So I think BPF acted fairly in turning down this misrepresentation claim.

I have thought about what Mr and Mrs S have said about not knowing they could make a claim until November 2015. However, in the circumstances of this case, I do not think that extends the time Mr S had to make a claim under the LA.

### **My final decision**

I do not uphold Mr S’s complaint that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, unfairly turned down his claim under s.75 CCA.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 22 August 2024.

Mark Hutchings  
**Ombudsman**