

The complaint

Mr E'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 him 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.

The loan in question was taken out in Mr E's name only and as such, he is the only eligible complainant here. But, as the timeshare purchased using the loan was bought in the joint names of Mr E and Mrs E, I'll refer to them both throughout where appropriate.

What happened

Mr and Mrs E purchased membership of a timeshare that I'll call the 'points membership' – on 10 November 2009 (the 'Time of Sale'). They entered into an agreement with a timeshare provider (the 'Supplier') to buy 50,000 points at a cost of £10,799 (the 'Purchase Agreement').

The points in the Supplier's membership worked like a currency such that, every year, Mr and Mrs E could use the points to stay at the Supplier's holiday accommodation. That accommodation 'cost' different amounts of points depending on the size of the apartment, its location and the time of year.

Mr and Mrs E paid for their points membership by taking finance of £10,799 from the Lender (the 'Credit Agreement') in Mr E's name only. This loan was paid off in full in July 2010.

Mr E – using a professional representative (the 'PR') – wrote to the Lender on 24 November 2023 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender issued its final response letter on 1 December 2023, rejecting it on every ground. Mr E remained unhappy and so the complaint was referred to the Financial Ombudsman Service.

The complaint was then assessed by an Investigator at this Service who, having considered the information on file, concluded that while Mr E's Section 75 claim was within our Service's jurisdiction to consider, they felt the Lender likely had a valid defence to such a claim under the Limitation Act 1980 (the 'LA'). The Investigator also said they didn't feel that the PR's allegation relating to the authorisation of the credit broker was a reason to uphold the complaint. Lastly, the Investigator said that Mr E's complaint regarding an unfair credit relationship had been made too late in respect of the time limits for bringing a complaint under the Financial Conduct Authority ('FCA') DISP rules. So, our Service could not consider that aspect of the complaint.

Mr E disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I have dealt with whether our Service has jurisdiction to consider Mr E's complaint that the credit relationship between himself and the Lender was unfair to him under Section 140A of the CCA, in a separate decision.

This decision only considers the merits of Mr E's complaint about the way the Lender handled his claim under Section 75 of the CCA and his complaint about the Credit Agreement being arranged by an unauthorised credit broker.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context here.

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.

And having done that, I do not think this complaint should be upheld.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

Section 75 of the CCA protects consumers who buy goods and services on credit. It says, in certain circumstances, that the finance provider is legally answerable for misrepresentation or breach of contract by the supplier. As the Investigator in this case explained, 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 for me to consider whether Mr E's Section 75 claim for misrepresentation was time-barred under the LA before he put it to the Lender.

I wouldn't normally think it would be unfair for a respondent firm to rely on the LA to decline a claim that's been made outside the limitation period, and I don't think it's unfair in this instance. The date on which the cause of action accrued is, in this case, the Time of Sale. It was then that Mr E (and Mrs E) entered into an agreement based, they say, on the Supplier's misrepresentations. As the loan from the Lender was used to finance the purchase, it was also then that Mr E suffered a loss. It follows that Mr E had six years from the date of sale to make a claim for misrepresentation. But he didn't make his claim to the Lender until November 2023, which is outside the time limits set by the LA.

The PR said in response to the Investigator's view that section 32 of the LA gives Mr E more time to make his claim. I disagree. Section 32 of the LA has the potential to postpone the relevant limitation period in cases of fraud, concealment, or mistake. I have thought about that here. But in this case the PR has simply referenced section 32 of the LA, but it hasn't explained what issues concerning the legality of the timeshare arrangement with the Supplier which it says were concealed or fraudulently misrepresented, that would make it a relevant consideration that might extend time. So, I find it very difficult to see taking into account the brief submissions provided by the PR in this case, how section 32 could extend the time limit for Mr E.

I'm aware for example it's been argued the membership was misrepresented because Mr E says they couldn't holiday in the way the Supplier told them they would be able to. But that would have been clear to them soon after the Time of Sale. So, even if it could be said that section 32 is likely to have postponed the limitation period until they first discovered that the availability and quality of holidays was not what they thought it would be (and I make no such finding that it would), I'm not persuaded that would make a difference here.

So, I don't think the Lender acted unfairly or unreasonably here when it turned down Mr E's Section 75 claim.

The complaint about the Credit Agreement being unenforceable because it was arranged by a credit broker that was not licenced by the Office of Fair Trading to carry out that activity

The PR has said that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr E knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for the points membership. So, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mr E's financial loss – such that I can say that this complaint should be upheld as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate him, even if the loan wasn't arranged properly.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr E's Section 75 claim. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 13 April 2026.

Fiona Mallinson
Ombudsman