

The complaint

Mrs B, using a professional representative (“the PR”), has complained that Clydesdale Financial Services trading as Barclays Partner Finance (“the Lender”) acted unfairly and unreasonably by (1) being party to an unfair relationship with her under Section 140A of the Consumer Credit Act 1974 (“CCA”) and (2) declining to pay a claim under Section 75 CCA.

What happened

On 7 June 2009 (“the Time of Sale”), Mrs B attended a sales meeting with a timeshare provider (“the Supplier”). She agreed to take out a membership which provided her with 6,000 points that could be used to book holiday accommodation. Mrs B funded the purchase by borrowing the full amount of £5,199 through the Lender (“the Credit Agreement”). She repaid the loan in full on 14 December 2009.

The PR wrote to the Lender on 8 December 2023 to make a complaint about the relationship between Mrs B and the Lender (“the Letter of Complaint”). In summary, the PR said:

- Mrs B was concerned that there were no checks undertaken at the Time of Sale to determine if the loan was affordable for her.
- Mrs B was misled by the Supplier’s sales agents as to the benefits of “upgrading” her membership, in particular:
 - It misled her on the purported benefits of exclusive stays and availability as there always seemed to be no availability when she tried to book a holiday.
- Mrs B was placed under pressure to purchase the points.
- The Supplier breached the timeshare industry’s Code of Practice during the course of the sale.

The PR argued that the claims were not made too late as Mrs B *“only became aware of the misrepresentation and unfair relationship in recent years when there was a continuous lack of availability to book the holidays she wanted”*. The PR has referred to legislation it says is relevant in determining the time by which Mrs B needed to raise her complaint against the Lender due to what it says were concealments carried out by the Lender. The PR argued that this meant Mrs B had raised her complaint within six years of the date she learned of the misrepresentations and the unfairness.

On 8 February 2024, the Lender issued its final response to the complaint, rejecting it on the grounds that it had a defence to the claims under both sections of the CCA because of the time that had passed.

One of our investigators considered the complaint and did not think the Financial Ombudsman Service has the power to consider the complaint that the Lender was party to an unfair debtor-creditor relationship. He did think the Service could look into the Lender’s handling of the claim under s.75 CCA but thought that the Lender had a complete defence to

the claim due to the time limits set out in the Limitation Act 1980 (“the LA”). As the PR disagreed, it has asked for the matter to be referred to an Ombudsman.¹

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 considered everything, I do not think the Lender needs to do anything further to answer the complaint.

S.75 CCA: the Supplier’s misrepresentations at the Time of Sale

Mrs B says the Supplier misrepresented the timeshare membership to her at the Time of Sale and that she has a claim for misrepresentation against the Lender².

Under s.75 CCA, the Lender could be jointly liable for the alleged misrepresentations made by the Supplier. But it has argued that any claim brought by Mrs B for any alleged misrepresentations was made too late. The Lender has relied on the time limits set out in s.2 and s.9 of the LA to decline the claim. It would be for a court to decide whether the limitation period for such a claim as set out in the LA has expired, but I have thought about this argument as I think it is relevant in considering whether the Lender acted fairly in turning down the claim.

A claim under s.75 CCA 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 s.2 LA).

But a claim, like Mrs B’s, under s.75 is also an “action to recover any sum by virtue of any enactment” under s.9 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 B entered the purchase agreement at that time based on the alleged misrepresentations of the Supplier – which she says she relied on. 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.

The PR says the time limits should be extended by s.32 LA as Mrs B was “*unaware that the purchase was ill-founded in law and based on misrepresentation*”. S.32 has the potential to postpone the relevant limitation period in cases of fraud, concealment, or mistake. I have thought about that here, but as Mrs B says that the timeshare was misrepresented to her because she couldn’t holiday in the way the Supplier promised she could, that would have been clear to her not long after the Time of Sale. So, even if it could be said that s.32 is likely to have postponed the limitation period until she first discovered that the availability of

¹ This decision will only deal with the merits of the complaint about the Lender’s handling of the claim under s.75 CCA. I have previously concluded that the complaint that the Lender was a party to an unfair debtor-credit relationship falls outside the jurisdiction of the Financial Ombudsman Service.

² The letter written by the PR dated 8 December 2023 does not mention s.75 CCA. As the Lender has treated this letter as a claim under s.75, and the PR has referred its complaint to the Financial Ombudsman Service in these terms, I shall proceed on the basis that the points raised by the PR in relation to alleged misrepresentations were made under s.75 CCA.

holidays was not what she thought it would be (and I make no such finding that it would), I'm not persuaded that would make a difference here.

Mrs B first raised her claim with the Lender on 8 December 2023. And as more than six years had passed between the Time of Sale and the date she first put the claim to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mrs B's concerns about the Supplier's alleged misrepresentations.

My final decision

For the reasons I have set out above, I don't uphold Mrs B's complaint about Clydesdale Financial Service trading as Barclays Partner Finance's handling of her Section 75 CCA claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 14 March 2025.

Andrew Anderson
Ombudsman