

The complaint

Mr T has complained that Clydesdale Financial Services Limited, trading as Barclays Partner Finance ("BPF"), acted unfairly and unreasonably by deciding against paying a claim under s.75 of the Consumer Credit Act 1974 ("CCA").

What happened

Mr T, alongside his wife, entered into a timeshare membership agreement with a timeshare provider ("the Supplier") in June 2010. The membership cost £6,545 and was paid for by Mr T taking a loan from BPF in his sole name for the full amount. The loan was repaid in full in November 2010.

In February 2024, Mr T used a professional representative ("PR") to make a complaint to BPF about the purchase and associated loan. In short, PR alleged:

- No checks were undertaken to see if Mr T was eligible for the loan and so BPF did not properly assess his ability to repay the loan.
- Mr and Mrs T were misled and pressured into taking out their membership by the Supplier. They were not told the membership was 'in perpetuity' and in fact they gained nothing from their purchase. Further, the management fees increased in cost faster than they were originally told.
- The Supplier breached the Resort Development Organisation's Code of Conduct, which set best practice for the timeshare industry.

All of this led to an unfair credit relationship as defined by s.140A CCA. In making this complaint, PR noted that the loan agreement closed in March 2021 and so any complaint had been made within the relevant time limits.

BPF responded to say it did not accept the complaint made and rejected it on every ground. It treated some of the things that PR alleged happened as amounting to a misrepresentation claim under s.75 CCA, but said that any claim had been brought too late under the period set out in the Limitation Act 1980 ("LA"). It also said that any complaint that there was an unfair credit relationship had been made too late as the loan had been repaid in November 2010, which was more than six years before the complaint was made.

Unhappy with BPF's response, PR referred a complaint to our service on Mr T's behalf. In doing so, it expanded some of the points of complaint, including that Mr and Mrs T *'encountered significant obstacles when attempting to book any holidays with the Supplier'*. It confirmed that the complaint was that BPF was a party to an unfair credit relationship (as defined by s.140A CCA) and that it ought to have accepted and paid a claim made under s.75 CCA. PR also alleged that the Supplier was not authorised to broker the loan between Mr T and BPF.

With respect to BPF's position that any complaint had been made too late, PR said that Mr T only became aware of the misrepresentations and breaches recently and only after he took advice. It also argued that matters had been concealed from Mr T, so he was not able to complain earlier.

One of our investigators considered the complaint, 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 LA. She also thought that any complaint that BPF was a party to an unfair debtor-creditor relationship, as defined by s.140A CCA, had been made too late for our service to consider.

PR responded on behalf of Mr T to say it disagreed with what our Investigator had said. It thought our Investigator had placed too high a burden on Mr T to have realised he might have had cause for complaint earlier than he did. It said he entered into the timeshare membership in good faith, and it was unreasonable to expect him to have promptly identified issues with the purchase. PR also said that the facts relevant to the complaints and s.75 CCA claim were concealed from Mr T at the time of sale and were only revealed after he took advice. Given that, the limitation periods could not run due to the concealed facts.

In this decision I will deal solely with the complaint that BPF did not fairly deal with Mr T's claim under s.75 CCA. The remainder of Mr T's complaint will be dealt with 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 T said that the timeshare supplier misrepresented the nature of the membership when he bought it and that he 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 T for any alleged misrepresentations was made too late. I have considered that argument and, having done so, 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 T'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 T brought a like claim against BPF under s.75 CCA and the limitation period for the corresponding like claim would be the same as the underlying misrepresentation claim. Therefore, the limitation period for the s.75 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 T 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 June 2010, so Mr T had six years from then to bring a claim. But he did not make a claim against BPF until February 2024, which was

outside of the time limits set out in the LA. So, I think BPF acted fairly in turning down this misrepresentation claim.

Could limitation be extended?

The LA provides for extensions of the time limits in certain circumstances. If facts that were relevant to Mr T's potential claim were concealed from him, that could extend the time limit that applied. Although this was alleged by PR, it has not set out what facts it says were concealed from Mr T. Having considered everything, I cannot see any reason for the limitation period to be extended.

Was the Supplier authorised to broker credit?

PR has argued that the Supplier was not authorised to broker the loan on behalf of BPF. However, I think this argument is somewhat misconceived. Here, the Supplier was an Irish based company that arranged a loan for Mr T whilst he was in Portugal and I cannot see that it had any presence in the UK. That meant that it did not need UK authorisation to arrange such a loan. However, even if I am wrong about that, as Mr T's loan was taken out before 1 April 2014, Mr T has no right to recover any monies paid under the loan agreement if it had been arranged by an unauthorised broker.¹ Further, I cannot see any other reason why it would be fair to direct BPF to repay anything paid under the loan.

My final decision

Clydesdale Financial Services Limited, trading as Barclays Partner Finance, acted fairly in turning down Mr T's claim under s.75 CCA and I do not direct it to do anything further.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr T to accept or reject my decision before 14 March 2025.

Mark Hutchings
Ombudsman

¹ See <https://www.fca.org.uk/firms/validation-orders#:~:text=a%20Validation%20Order.-,Validation%20of%20existing%20agreements,unenforceable%20agreement%20to%20be%20enforced>.