

The complaint

Mr A, 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 credit relationship with him under Section 140A ("s.140A") of the Consumer Credit Act 1974 ("CCA") and (2) by deciding against paying a claim under Section 75 ("s.75") CCA¹.

What happened

On 20 September 2010 ('the Time of Sale 1'), Mr A attended a sales meeting with a timeshare provider ("the Supplier"). He agreed to take out a membership which provided him with 53,001 points that could be used to book holiday accommodation. Mr A funded the purchase by borrowing the full amount of £6,335 through the Lender. He repaid the loan in full on 20 April 2011.

On 29 October 2012 ('the Time of Sale 2'), Mr A attended another sales meeting with the Supplier. He agreed to take out another membership which provided him with 44,000 more points to be used to book holiday accommodation. Mr A funded this purchase by borrowing the full amount of £8,050 from the Lender using the same account as before. He repaid the loan in full on 23 April 2013.

The PR wrote to the Lender on 6 December 2023 to make a complaint about the relationship between Mr A and the Lender ("the Letter of Complaint"). In summary, the PR said:

- Mr A was concerned that there were no checks undertaken at the Time of Sale 1 and 2 to determine if the loans were affordable for him.
- Mr A was misled by the Supplier's sales agents as to the benefits of purchasing the points.
- Mr A was placed under pressure to purchase the points.
- Mr A was told he could transfer the points to his children, but this would happen "*automatically*" and was not merely optional.
- The Supplier told Mr A that the points were "*an investment on the basis that the purchase price would increase in value over time*".
- The Supplier breached the timeshare industry's Code of Practice during the course of the sales.

The PR argued that the claims were not made too late as Mr A was not aware he had cause for complaint until he saw material online about the mis-selling of timeshares, which led him to seek its advice. The PR has referred to legislation it says is relevant in determining the time by which Mr A needed to raise his complaint against the Lender due to what it says were concealments carried out by the Lender. The PR argued that this meant Mr A had

¹ The Letter of Complaint sent by the PR does not mention s.75 CCA. As the Lender has treated this letter as a claim under s.75 as well as a complaint under s.140A, 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 were made under these sections of the CCA.

raised his complaint within six years of the date he learned of the misrepresentations and the unfairness.

On 8 May 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 with the outcome, it has asked for the matter to be referred to an Ombudsman. As I already explained in another decision that the complaint raised under s.140A CCA falls outside the jurisdiction of the Financial Ombudsman Service, my decision will only cover the complaint about the Lender's handling of the claim under s.75 CCA.

Mr A is the eligible complainant as he is the named party on the Credit Agreement. I will also refer to his partner, Mrs A, where appropriate, as she attended both sales and is named on both timeshare agreements.

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.

Mr A says the Supplier misrepresented the timeshare membership to him at the Time of Sale and that he has a claim for misrepresentation against the Lender.

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 Mr A 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. For the avoidance of doubt, 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 that Mr A 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 Mr A'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 point in which Mr A entered into the agreement to buy the timeshare memberships. I say this because Mr A entered the purchase agreements at those times based on the alleged misrepresentations of the Supplier – which he says he relied on. And as the loans from the Lender were used to help finance the purchases, it was when he entered into each Credit Agreement that he suffered a loss.

The PR says the time limits should be extended by s.32 LA as Mr A 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 Mr A says that the timeshare was misrepresented to him because he couldn’t holiday in the way the Supplier promised he could, that would have been clear to him not long after the Time of Sale 1 and 2. So, even if it could be said that s.32 is likely to have postponed the limitation period until he first discovered that the availability of holidays was not what he thought it would be (and I make no such finding that it would), I’m not persuaded that would make a difference here. And I cannot see any other reason for the limitation period to be extended.

Mr A first raised his claim with the Lender on 6 December 2023. And as more than six years had passed between the Time of Sale 1 and 2 and the date he first put the claim to the Lender, I think the Lender acted fairly when it turned down the s.75 claim.

My final decision

For the reasons I have set out above, I don’t uphold Mr A’s complaint about Clydesdale Financial Service trading as Barclays Partner Finance’s handling of his Section 75 CCA claim.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A to accept or reject my decision before 28 May 2025.

Andrew Anderson
Ombudsman