

The complaint

Ms B's complaint is, in essence, that Clydesdale Financial Services Limited trading as Barclays Partner Finance ("BPF") acted unfairly and unreasonably by (1) participating in an unfair credit relationship with Ms B under Section 140A of the Consumer Credit Act 1974 (the "CCA"), (2) deciding against paying a claim under Section 75 of the CCA, (3) lending irresponsibly having failed to conduct the required affordability checks and (4) enforcing a credit agreement arranged by an unauthorised credit broker.

What happened

Ms B (together with another) purchased a timeshare product (the "Timeshare") from a timeshare provider (the "Supplier") on 26 January 2010 (the "Time of Sale"). The purchase price agreed of £4,893 (the "Purchase Agreement") was funded under a new Credit Card Agreement with BPF (the "Credit Agreement") in Ms B's sole name. Because of that, only Ms B is an eligible complainant here. So, I'll refer to her only throughout this decision. All borrowing under the Credit Agreement was repaid in full in August 2010.

In October 2023, using a professional representative (the "PR"), Ms B submitted a claim to BPF which included:

1. Misrepresentations by the Supplier at the Time of Sale giving Ms B a claim against BPF under Section 75 of the CCA ("S75"), which BPF failed to accept and pay.
2. A breach of contract by the Supplier giving her a claim against BPF under S75, which BPF failed to accept and pay.
3. BPF being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA ("S140A").
4. The decision to lend being irresponsible because:
 - a. BPF did not carry out the right creditworthiness assessment; and
 - b. the money lent to Ms B under the Credit Agreement was unaffordable for her;
5. The Supplier wasn't authorised to carry on regulated activities rendering the Credit Agreement unenforceable under section 27 of the Financial Services and Markets Act 2000 ("FSMA").

The specifics of Ms B's claim included:

(1) S75: the Supplier's misrepresentations at the Time of Sale

The PR says that the Supplier made a number of pre-contractual misrepresentations to Ms B at the Time of Sale – namely that the Supplier:

1. told her that the Timeshare was an investment that would considerably appreciate in value;
2. promised a considerable return on investment;
3. told her its resale department would sell the Timeshare quickly at a profit when she listed it for sale in a couple of years; and
4. told her the duration of the loan would only last for a short period of time until the

Timeshare was sold.

(2) S75: the Supplier's breach of contract

Although no specific breach of contract was specified by the PR, they allege that the Supplier started insolvency proceedings in January 2020 meaning that Ms B wouldn't be able to recover any amounts awarded against the Supplier by English or Spanish courts.

(3) S140A: BPF's participation in an unfair credit relationship

The PR set out several reasons why the credit relationship between Ms B and BPF was unfair to her under S140A. In summary, they include the following:

1. Ms B wasn't given enough time to properly read and consider the implications of the Purchase Agreement.
2. Terms within the Purchase Agreement, in particular relating to the payment of annual maintenance fees and a default clause were unfair.
3. Maintenance fee payable had risen exponentially with no reasonable explanation.
4. The Timeshare was sold as an investment in breach of Regulation 14(3) ('R14(3)') of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations')

Neither the PR nor Ms B received a response from BPF. So, the PR referred Ms B's claim to this service as a complaint.

This service referred Ms B's complaint back to BPF for comment. In response, BPF said they thought Ms B's claims under S75 and S140A had been brought too late under the provisions of the Limitation Act 1980 (the "LA"). They also didn't think there was currently any evidence to support a breach of contract.

One of this service's investigators considered all the evidence and information available. Having done so, our investigator thought:

1. The complaints suggesting BPF's participation in a credit relationship that was unfair to Ms B and the decision to lend was irresponsible were not within the Financial Ombudsman Service's jurisdiction because they weren't made in time under the limits set out in Rule 2.8.2 R (2) of the Financial Conduct Authority's (the "FCA") Dispute Resolution Rules ("DISP");
2. the complaint about BPF's decision not to accept Ms B's concerns about the supplier's alleged misrepresentations was made in time under DISP 2.8.2 R (2). But BPF didn't act unfairly or unreasonably by not upholding them;
3. there was no evidence to support the allegation that the Supplier didn't hold the necessary regulatory authorisation to introduce the Credit Agreement with BPF; and
4. there was no evidence that the Supplier had breached the purchase contract such that BPF could be held liable under S75.

The PR didn't agree with our investigator's findings. In response, it provided a copy of a response it had received from the FCA which confirmed that it could find no record of the Supplier being authorised. It suggested that the Supplier had deliberately concealed information about Ms B's ability to sell her Timeshare in the future. It also made reference to the findings of a judicial review relating to the sale of a different kind of timeshare which found that the timeshares in that case had been sold in breach of R14(3) of the Timeshare Regulations.

In summary, the PR thought that the provisions of section 32 of the Limitation Act 1980 meant that any limitation under that legislation could be postponed. The PR went on to reiterate it's view that the Purchase Agreement included unfair terms. And in doing so,

referred to case law that it thought relevant. The PR asked that Ms B's complaint be referred to an ombudsman, which is why it was passed to me.

Having considered the relevant information about this complaint I was inclined to reach the same outcome as our investigator. But in doing so, some of my reasoning differed slightly from that of our investigator, and I also expanded on some other parts in order to provide more clarity. So, I issued a provisional decision ('PD') on 1 April 2025 giving Ms B and Clydesdale Financial Services Limited trading as Barclays Partner Finance the opportunity to respond to my findings below before I reached a final decision.

In my PD, I found that:

1. Ms B's complaint about a credit relationship with BPF that is alleged to be unfair to her isn't within our jurisdiction because it wasn't referred to this service within the time limits set out in DISP 2.8.2 R (2);
2. Ms B's complaint that BPF failed to complete affordability checks isn't within our jurisdiction because it wasn't referred to this service within the time limits set out in DISP 2.8.2 R (2).
3. Ms B's complaint that BPF unfairly failed to uphold a claim for misrepresentation of her Timeshare and the associated Finance Agreement, and a breach of contract is within our jurisdiction as it was referred to this service within the time limits set out in DISP 2.8.2 R (2). But BPF's decision not to uphold it wasn't unfair or unreasonable;
4. I've found no reason that would require the payment of compensation by BPF in the event the Credit Agreement was found to be unenforceable.

In acknowledging receipt of my PD, both BPF and the PR (on Ms B's behalf) did not provide any further comment or information for me to consider. So, Ms B's complaint was passed back to me.

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 done that, I still don't think Ms B's complaint should be upheld insofar as it relates to her concerns about BPF's responsibilities under S75 for the alleged misrepresentations and breach of contract. And also her concerns around the Supplier's authorisation and the resultant enforceability of the Credit Agreement.

For completeness, I said the following in my PD:

S75 operates quite differently to S140A and, when it applies, it can give borrowers a very different ground for complaint against a lender. Whereas S140A imposes responsibilities on creditors in relation to the fairness of their credit relationships, S75 simply creates a financial liability that the creditor (BPF) is bound to pay. Liability under S75 isn't based upon anything the lender does wrong. Rather upon misrepresentations and breaches of contract by the Supplier. S75 imposes on the lender a "like claim" to that which the borrower enjoys against the supplier. If the lender is notified of a valid S75 claim, it should pay its liability. And if it fails or refuses to do so, that can give rise to a complaint to this service.

So, when a complaint is referred to this service on the back of an unsuccessful S75 claim, the act or omission that engages this service's jurisdiction is the creditor's refusal to accept or pay the debtor's claim. This is distinct from anything that occurred before the claim was made such as the supplier's alleged misrepresentation(s) and/or breach(es) of contract.

Was Ms B's S75 complaint made in time?

As far as Ms B's S75 complaint is concerned, the six- and three-year time limits (under DISP 2.8.2 (2) R) don't usually start until the respondent firm answers and refuses the claim. Here, BPF initially failed to respond to the claim and later refused to accept and reimburse Ms B under the claim initiated in October 2023. So, the primary time limit of six years only started once BPF responded. And as this complaint about BPF's handling of Ms B's complaint was referred to this service in February 2024, it was made in time for the purpose of the rules on this service's jurisdiction.

So, having decided this service is able to consider this aspect of Ms B's complaint, I've considered the allegations and circumstances further.

Ms B's misrepresentation complaint under S75

I don't think it would be fair or reasonable to uphold Ms B's complaint for reasons relating to the S75 misrepresentation claim. As a general rule, creditors can reasonably reject S75 claims that they are first informed about after the claim has been time-barred under the LA. It wouldn't be fair to expect creditors to look into such claims so long after the liability first arose and after a limitation defence would be available in court. So, it's relevant to consider whether Ms B's S75 claim was time-barred under the LA before it was put to BPF.

As I've explained, a claim under S75 is a "like" claim against the creditor. It essentially mirrors the claim Ms B 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 Section 2 of the LA).

But a claim under S75, like this one, is also "*an action to recover any sum by virtue of any enactment*" under Section 9 of the 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 here was the Time of Sale. I say this because Ms B entered into the purchase of the timeshare product at that time based upon the alleged misrepresentations of the Supplier – which Ms B says she relied upon. And as the Credit Agreement with BPF provided funding to help finance that purchase, it was when she entered into the Credit Agreement that she allegedly suffered the loss.

The PR first notified BPF of Ms B's S75 complaint in October 2023. And as more than six years had passed between the Time of Sale and when the complaint was first put to BPF, I don't think it was ultimately unfair or unreasonable of BPF to reject her concerns about the Supplier's alleged misrepresentations.

Could the limitation period be postponed?

The PR argue that the limitation period should be extended under Section 32 of the LA because facts relevant to Ms B's claim were deliberately concealed.

Section 32(1)(b) applies when "*any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant*" [my emphasis]. But the PR haven't provided me with any persuasive evidence to demonstrate that the Supplier deliberately concealed anything in relation to the various allegations that Ms B wouldn't have realised well before she submitted the claim. And as I still can't see why, given the allegations fuelling the claim, these particular issues prevented Ms B from making a claim or - at the very least - raising a complaint earlier, my view is that this particular argument by the PR doesn't help Ms B's cause.

Based upon my findings above, I'm not persuaded that there's any reason why a court might decide time could be extended in keeping with the provisions of the S32 of the LA.

Ms B's breach of contract complaint under S75

The PR suggests that as a consequence of the Supplier entering into an insolvency process in 2020, Ms B is unable to recover any award made by the courts. But I haven't seen any evidence to suggest that such an award has been made. And as a consequence, I can't see that there's been any loss such that BPF could be held liable for it.

Furthermore, I haven't been provided with anything to suggest that Ms B is unable to continue using her Timeshare because of any contractual breach of the Purchase Agreement by the Supplier. BPF have confirmed – and I'm also aware - that the associated resort remains open and available for use.

The credit broker's authorisation

The PR believes that the Supplier wasn't authorised to broker the Credit Agreement. And because of that, they believe Ms B's loan is unenforceable.

The Credit Agreement Ms B entered into was dated 26 January 2010. The FCA took on the regulation of consumer credit on 1 April 2014. Prior to that, consumer credit was regulated by the Office of Fair Trading ("OFT") under the CCA. And the Supplier would need to have held a license from the OFT.

Section 27 of the Financial Services and Market Act 2000 ("FSMA") ("*Agreements made through unauthorised persons*") only applies to (FCA) regulated activities, which in this case doesn't cover consumer credit lending prior to 1 April 2014.

In October 2019, the FCA issued explanation and guidance relating to Validation Orders to allow an otherwise unenforceable credit agreement. This was updated in February 2023. Insofar as it's relevant to Ms B's complaint, the FCA explanation says,

"For agreements entered into before 1 April 2014, a modified regime applies. [...] For agreements that were entered into before this date and which are unenforceable against the borrower, the borrower has no right to recover any money paid or other property transferred under the agreement or compensation for loss".

That aside, if Ms B's Credit Agreement was found to be unenforceable – and I make no such finding – it would normally mean that whilst the obligations under the agreement remain in existence, one or both parties to the agreement can't enforce compliance in the courts. So, if BPF took steps against Ms B to enforce the agreement, there might be a defence. However, I don't think this is relevant in Ms B's case. She repaid all amounts due under the Credit Agreement in full in August 2010.

In reality, Ms B took the finance from BPF and subsequently repaid it. She knew she had the finance, the amount borrowed and what it was for (the Timeshare purchase). So, even if it was found to be improperly brokered, I haven't seen anything that persuades me that it would've resulted in something that would require the payment of compensation.

In the absence of any new comments or evidence to consider, I've no reason to vary from my provisional findings. And because of that, I will not be asking BPF to do anything more here.

My final decision

For the reasons set out above, I do not uphold Ms B's complaint about Clydesdale Financial Services Limited trading as Barclays Partner Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 20 May 2025.

Dave Morgan
Ombudsman