DRN-5504188

The complaint

Mr B, with the help of a professional representative ('the PR'), complained about the brokering of a loan (the 'Credit Agreement') Mr B took out with Clydesdale Financial Services, trading as Barclays Partner Finance (the 'Lender').

What happened

On 30 May 2011 (the 'Time of Sale'), Mr B purchased a points-based timeshare membership (the 'Timeshare') from a timeshare provider (the 'Supplier'), which was funded by the Credit Agreement.

On 25 April 2024, the PR complained to the Lender, saying that the Credit Agreement was brokered by an entity I'll call 'LRL'. The PR said that there is no record of LRL being regulated by either the Office of Fair Trading ('OFT') or the Financial Conduct Authority ('FCA') at the Time of Sale. The PR said that this rendered the Credit Agreement unenforceable and that, under s.27 of the Financial Services and Markets Act 2000 ('FSMA'), Mr B is entitled to all the money paid to the Lender under the Credit Agreement, with interest added at 8%, plus the maintenance fees paid by Mr B to the Supplier, and to have any remaining balance written off.

The PR says Mr B suffered detriment as a consequence of purchasing the Timeshare for reasons which I have summarised as follows:

- Mr B knew he was taking on a "*huge liability*" with the Lender, in the form of the Credit Agreement, and did not know how to get out of the liability.
- There were operational issues with the Timeshare, namely:
    - Mr B needed to make reservations "a year in advance" for the holidays he wanted.
    - The holidays were not exclusive and can be booked online for less than the annual management charge he pays.
    - He was not warned the management charges would increase.
- He would not have known how to complain to the Lender about these issues.

The PR said that, as a result of the improper brokering of the loan, and the detriment suffered as a result of issues with the Timeshare, the relationship between Mr B and the Lender was unfair under s.140A CCA.

The Lender responded to the complaint, saying it was raised outside of the time limits set out in the Limitation Act 1980 ('LA').

On 20 May 2024, The PR wrote to our service to ask us to investigate matters. It said at the time that its complaint was only about the Lender's right to enforce the Credit Agreement and did not involve a claim under the CCA, so the Lender was wrong to rely on the LA in its response.

One of our investigators looked into things and concluded that the complaint about an unfair relationship fell outside our jurisdiction as it was raised too late. And he concluded that the complaint about the Lender enforcing the Credit Agreement ought to be rejected.

The PR rejected the investigator's view on 10 July 2024, saying it was "*somewhat perplexed*" at the outcome from both our service and the Lender. The PR reiterated that the complaint "*as this claim does not fall under [the CCA], the [LA] does not give the Bank a defence to it*" The PR revised its complaint to say that, as the Credit Agreement was brokered prior to 1 April 2014, s.149 CCA applies, and not s.27 FSMA. The PR says that the Credit Agreement is still rendered unenforceable and as Mr B has suffered detriment, the relationship is unfair under s.140A CCA and he is entitled to compensation. The PR also says the complaint was brought in time, and therefore falls within our jurisdiction, as Mr B only recently found that there might be a problem with the way the Credit Agreement was brokered after he instructed the PR.

On the same day, 10 July 2024, the PR wrote to the Lender, and sent a copy of that letter to our service as an appendix to its rejection of the investigator's view. In this letter, The PR says that it "*would like to revise the breach of FSMA regulations as they did not come into force until 01/04/2014 when the FCA became the regulator*". And it says:

"Under s149 CCA the credit agreement is unenforceable and as [Mr B] has suffered detriment of being mis-sold the Timeshare, the relationship is unfair under s140A CCA and [Mr B] is entitled to compensation".

As the PR disagreed with the Investigator's assessment and asked for an Ombudsman's decision – it was passed to me. I considered the complaint and issued a provisional decision. I explained that I thought some parts of the complaint fell outside of our jurisdiction and, for those parts that I could consider, I thought the Lender did not need to do anything further. Specifically, I thought the complaint that the Lender was party to an unfair relationship with Mr B was raised too late. I thought I did have the power to consider the part of the complaint about the Lender enforcing the loan.

An extract of my provisional decision reads as follows:

The PR's letter of complaint raised an allegation that the Lender enforced an improperly brokered loan – the Credit Agreement. Although it brought this part of the complaint into the complaint about an unfair relationship under s.140A CCA, I think the activity of enforcing the Credit Agreement is one our service can consider separately from s.140A CCA against the Lender, falling under the regulated activity of the Lender exercising its rights and duties under the Credit Agreement.

The Investigator covered this aspect of the complaint in his view, saying:

> *"…the evidence provided doesn't persuade me that the actual credit broker wasn't authorised to arrange the Credit Agreement".*

I have thought about the DISP rules on this particular complaint point, and I think this part of Mr B's complaint was raised within the time limits. This is because I don't think Mr B was aware, nor do I think he ought to have been aware, that there may have been a problem with the way the Lender ran the Credit Agreement because of how it was brokered until he contacted the PR, which happened within three years of the date he complained.

As I outlined above, the PR first said the Credit Agreement was brokered in breach of s.27 FSMA. But this was incorrect as it noted in its subsequent letter to the Lender. At the Time of Sale, brokers carrying out a regulated activity within the United Kingdom needed to hold a

licence to do this, which fell under the remit of the OFT. And s.149 CCA covered what happened when a loan was brokered by an unlicensed broker.

I have not made a finding on whether LRL was properly authorised at the Time of Sale to broker loans or whether it even needed authorisation (given that it was a company registered outside of the United Kingdom brokering credit outside of the UK too). That is because, even if I accepted that the loan was improperly arranged, I do not think it means the Lender needs to do anything further.

Here, the PR is mistaken when it says that s.149 CCA entitled customers, like Mr B, to compensation in the event that a loan was not brokered by a licenced person. Unlike s.27 FSMA, which took effect on 1 April 2014, s.149 CCA did not provide customers with the right to recover any monies paid towards a Credit Agreement found to be brokered by an unlicensed broker. I have included a link to the FCA's website that explains this:

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

With this being the case, I don't see why the Lender would be required to return any monies or anything else to Mr B, whether or not the loan was improperly brokered as the PR alleges.

The PR has said that the Credit Agreement was unenforceable against Mr B, which is the effect of s.149 CCA. But if that was the case, all that would mean is that the Lender couldn't have pursued Mr B for repayment through the courts. But as he paid the Credit Agreement off early and did not miss any payments, I can't see how this is relevant.

I have also considered whether it would be fair or reasonable to direct the Lender to do anything had LRL not been properly authorised. But here, Mr B took out a loan knowing how much it was for, what the repayments were and for how long. So even if the loan was not properly arranged, I can't see how that has caused him a loss. It follows, I don't propose to tell the Lender to do anything further.

The Lender agreed with the provisional decision.

The PR replied to say it had nothing further to add.

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.

As I've not been given anything further to consider by either party, I see no reason to depart from the findings in my provisional decision as set out above.

My final decision

I don't uphold Mr B's complaint that Clydesdale Financial Services, trading as Barclays Partner Finance, acted improperly when it ran Mr B's Credit Agreement.
Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 May 2025.

Andrew Anderson
Ombudsman