

## The complaint

Mrs V complains that Clydesdale Financial Service Limited trading as Barclays Partner Finance (“BPF”) acted unfairly and unreasonably by (1) participating in an unfair credit relationship with her under Section 140A of the Consumer Credit Act 1974 (the “CCA”) and (2) deciding against paying a claim under Section 75 of the CCA.

## What happened

Mrs V, together with another, purchased a “*Fixed-week*” timeshare interest from a timeshare provider (the “Supplier”) in 2006. In 2007, Mrs V upgraded her timeshare interest to a “*points-based*” timeshare with the Supplier.

In or around January 2010 (the “Time of Sale 1”), Mrs V purchased a further upgrade to the points-based timeshare providing her with 50,000 points for use against holidays and experiences from the Supplier (“Timeshare 1”). The purchase price agreed of £8,800 was funded under a new regulated loan agreement with BPF (“Credit Agreement 1”) in her sole name.

In or around June 2011 (the “Time of Sale 2”), Mrs V again purchased an upgrade to the points-based timeshare providing her with an additional 40,000 points with the Supplier (“Timeshare 2”). The purchase price agreed of £5,100 was again funded under a new regulated loan agreement with BPF (“Credit Agreement 2”), also in her sole name.

It’s important to note that whilst Timeshares 1 and 2 were purchased in joint names, the Credit Agreements were in Mrs V’s sole name. As a consequence Mrs V is the only eligible claimant here and therefore, the only eligible complainant. So, I will refer to Mrs V only throughout this decision.

In December 2023, Mrs V – using a professional representative (the “PR”) – submitted a complaint to BPF (the “Letter of Complaint”) about her purchase of Timeshare 1. In doing so, the PR said that the purchase had been funded using a credit card issued to her by a different business (the “Credit Card Provider”) which was part of the same Group of companies as BPF. In particular, the PR included allegations:

- of misrepresentations by the Supplier at the Times of Sale 1, for which Mrs V has a like claim against the Credit Card Provider under Section 75 of the CCA (“s.75”), including:
  - that Mrs V was told she could surrender her points within five years provided maintenance (charges) were up to date; and
  - maintenance (charges) would be halved but they escalated faster than Mrs V was initially told.
  - purported benefits were not received and Mrs V was unable to take the holidays she wanted at the times she wanted and was not able to access exclusive services.
- the credit relationship with the Credit Card Provider was unfair pursuant to Section 140A of the CCA (“s.140A”) due to:
  - the Supplier’s misrepresentations;

- failure to inform Mrs V that she could relinquish herself from her timeshare products pursuant to the Regulation 20 (4) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the “Timeshare Regulations”) resulting in a breach of Regulation 6 of the Consumer Protection from Unfair Trading Regulations 2008 (“CPUT”).

BPF provided its final response to Mrs V’s complaint on 20 June 2024. However, its response referred to the two loans it had provided to Mrs V (Credit Agreements 1 and 2) in January 2010 and June 2011 rather than the credit card agreement referred to by the PR. BPF thought Mrs V’s complaints under s.75 and s.140A had been brought too late (under the provisions of the Limitation Act 1980 (the “LA”).

The PR didn’t agree with BPF’s findings pointing out that Mrs V hadn’t purchased Timeshares 1 and 2 with loans. Rather that they were purchased using a credit card in her sole name with the Credit Card Provider. Furthermore, the PR explained why it didn’t think Mrs V’s complaint had been made too late with particular reference to:

- Section 32 of the LA;
- The Supreme Court findings in *Smith and another vs Royal Bank of Scotland UKSC/2022/004 (“Smith v RBS”)*;

BPF responded acknowledging the PR’s observations and confirmed closure of the complaint as it related to Credit Agreements 1 and 2. It also confirmed it would arrange for a new complaint to be opened in relation to Mrs V’s credit card.

In December 2024, the PR referred Mrs V’s complaint to the Financial Ombudsman Service. The basis of the complaint referred remained (on the whole) unchanged. However, it was amended in so far as it now referred to Credit Agreements 1 and 2 (rather than Mrs V’s credit card). Furthermore, the complaint extended to include the purchase of Timeshare 2 – not referred to in the original complaint to BPF.

Mrs V’s complaint was referred to BPF by this service for comment whereupon BPF confirmed that the purchase of Timeshare 1 and 2 had been financed with funding under Credit Agreement 1 & 2 rather than a credit card. Having considered the complaint referred, BPF reiterated the contents of its complaint response of 20 June 2024.

One of the service’s investigators considered all the information and evidence available. Having done so, the investigator said:

- Mrs V’s complaint suggesting BPF’s participation in a credit relationship that was unfair to her wasn’t within the Financial Ombudsman Service’s jurisdiction because it wasn’t made in time under the limits set out in Rule 2.8.2 R (2) of the Financial Conduct Authority’s (“FCA”) Dispute Resolution Rules (“DISP”).
- Mrs V’s complaint about BPF’s decision to reject her 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 coming to the decision it did.

The PR didn’t agree with the investigator’s findings. In particular, it thought:

- the investigators findings “*bucked away*” from the findings in *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) (“*Shawbrook & BPF v FOS*”); and
- facts relevant to Mrs V’s complaint were concealed at point of sale and only revealed when she sought advice such that the limitation period should be postponed pursuant to Section 32 of the LA (“s.32”).

Mrs V’s complaint was therefore passed to me to consider.

## 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.

### Relevant considerations

When considering what's fair and reasonable, DISP<sup>1</sup> 3.6.4R of the FCA Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

The CCA introduced certain protections that afforded consumers (like Mrs V) a right of recourse against lenders that provide the finance for the acquisition of goods or services (like the timeshare products purchased) from suppliers.

The concerns Mrs V has about the sale of the products she purchased only constitute a complaint that the Financial Ombudsman Service has the authority to consider if those concerns are considered with at least one of those provisions of the CCA in mind.

S.75 provides protection to consumers for goods or services bought using credit. Mrs V paid for Timeshares 1 and 2 under Credit Agreements 1 and 2 with BPF specifically for that purpose. So, it isn't in dispute that s.75 applies here – subject to any restrictions and limitations. So, where the requirements of the CCA are met, it means Mrs V is afforded the protection offered to borrowers like her under those provisions. As a result, I've taken this section into account - together with any related provisions within the CCA - when deciding what's fair in the circumstances of this case.

S.140A looks at the fairness of the relationship between Mrs V and BPF arising out of the credit agreements (taken together with any related agreements). And because the products purchased were funded under Credit Agreements 1 and 2, they're deemed to be related agreements.

Given the facts of Mrs V's complaint, relevant law also includes the LA. This is because the original transactions - the purchases funded by Credit Agreements 1 and 2 with BPF - took place in January 2010 and June 2011. Only a court is able to make a ruling under the LA, but as it's relevant law, I've considered any effect this might also have.

I want to make it clear that I've based my decision on what I think is more likely than not to have happened given the evidence that's available from the time and the wider circumstances. When doing that, my role isn't to address every single point that's been made. So, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided by both sides.

At this stage, I wish to take this opportunity to clarify the complaint being considered here. The Letter of Complaint originally only referred to the purchase of Timeshare 1 and suggested payment was made by Mrs V using her credit card. However, BPF have confirmed that Mrs V's credit card account wasn't actually opened until March 2014 – some years after the purchases were made.

It seems it was only upon referral to this service that the PR made specific reference to Credit Agreements 1 and 2, and also to the purchase of Timeshare 2 in 2011. However, when this service referred Mrs V's complaint to BPF for comment, it confirmed that its final response in June 2024 remained appropriate. So, the complaint I'm considering here relates specifically to the purchase of Timeshares 1 and 2 funded under Credit Agreements 1 and 2.

Having considered everything, I decided that the Financial Ombudsman Service's jurisdiction doesn't permit me to consider the merits of Mrs V's complaint about BPF's participation in an

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<sup>1</sup> Dispute Resolution: Complaints Sourcebook ("DISP")

unfair credit relationship because it wasn't made within the time limits set out in DISP 2.8.2 R (2). I've explained my reasons for this to the parties to this complaint in a separate decision.

However, s.75 operates quite differently to s.140A and, when it applies, it can give borrowers a very different ground for complaint against a lender. Whereas s.140A imposes responsibilities on creditors in relation to the fairness of their credit relationships, s.75 simply creates a financial liability that the creditor (BPF) is bound to pay. Liability under s.75 isn't based upon anything the lender does wrong. Rather upon misrepresentations and breaches of contract by the Supplier. S.75 imposes on the lender a "like claim" to that which the borrower enjoys against the supplier. If the lender is notified of a valid s.75 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 s.75 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 Mrs V's s.75 complaint made in time?

As far as Mrs V's s.75 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 refused to accept and reimburse Mrs V under the claim initiated in December 2023. So, the primary time limit of six years only started once BPF responded – here that was in writing on 20 June 2024. And as this complaint about BPF's handling of Mrs V's complaint was referred to this service in December 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 Mrs V's complaint, I've considered the allegations and circumstances further.

#### Mrs V's misrepresentation complaint under s.75

Having done that, I don't think it would be fair or reasonable to uphold Mrs V's complaint for reasons relating to the s.75 misrepresentation claim. As a general rule, creditors can reasonably reject s.75 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 Mrs V's s.75 claim was time-barred under the LA before it was put to BPF.

As I've explained, a claim under s.75 is a "like" claim against the creditor. It essentially mirrors the claim Mrs V 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 s.75, 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 each Sale. I say this because Mrs V entered into the purchase of the Timeshare Products at those times based upon the alleged misrepresentations of the Supplier – which Mrs V says she relied upon. And as the Credit Agreements with BPF provided funding to help finance those purchases, it was when she entered into the Credit Agreements that she allegedly suffered the loss.

Mrs V first notified BPF of her s.75 complaint in December 2023. And as considerably more than six years had passed between the Time of each Sale and when the complaint was first

put to BPF, I don't think it was ultimately unfair or unreasonable of the Lender 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 ("s.32") because facts relevant to Mrs V's claim were deliberately concealed.

S.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 Mrs V 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 Mrs V 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 her 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 s.32.

I appreciate that Mrs V will be very disappointed, but I will not be asking the Lender to do anything more.

**My final decision**

For the reasons set out above, I do not uphold Mrs V'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 Mrs V to accept or reject my decision before 27 May 2025.

Dave Morgan  
**Ombudsman**