DRN-5594150

The complaint

Mr H's complaint is, in essence, that Lloyds Bank PLC (the 'Lender') acted unfairly and unreasonably by (1) deciding against paying a claim under Section 75 of the Consumer Credit Act 1974 – as amended - (the "CCA") and (2) participating in an unfair credit relationship with them under Section 140A of the CCA.

What happened

In or around 1997 Mr H (together with another) purchased a timeshare product from, a timeshare provider (the 'Supplier') for a total agreed purchase price of £5,710. Mr H paid for that purchase using a credit card.

On 21 February 2011 (the 'Time of Sale'), Mr H traded in their existing timeshare product and purchased a replacement timeshare membership product (the 'Timeshare') from the Supplier. They entered into an agreement with the Supplier to buy 18,000 timeshare points at a cost (after the trade in) of £2,500 (the 'Purchase Agreement'). Mr H paid for the Timeshare using a credit card with the Lender in his sole name (the 'Credit Agreement'). Because of that, Mr H is the only eligible complainant here. So, throughout this decision, I will refer to Mr H only.

In January 2024, Mr H – using a professional representative (the 'PR') – submitted a claim to the Lender under section 75 of the CCA ('S75'). In short, the PR said the supplier had made misrepresentations at the Time of Sale that, under S75, the Lender was jointly responsible to answer. Furthermore, the claim also included alleged misrepresentations made by the supplier when Mr H purchased the earlier timeshare product in 1997.

The Lender responded to the claim in March 2024 and said it was unable to review under S75 due to the *"Statute of Limitations".*

The PR didn't accept the Lender's findings so submitted a complaint to the Lender on Mr H's behalf. In doing so, the PR pointed out that Mr H's credit card hadn't expired until March 2018. And following the judgment in *Smith v RBS*[1] Mr H's relationship with the Lender didn't end until that point, after which he had 6 years during which to bring his claim.

The Lender responded to Mr H's complaint in writing on 17 June 2024, rejecting it on all grounds. So, the PR referred his complaint to the Financial Ombudsman Service. An investigator considered all the information and evidence provided and thought the Lender had not acted unfairly or unreasonably in rejecting Mr H's complaint due to the effects of the Limitation Act 1980 (the 'LA').

The PR disagreed with the investigator's findings. In particular, it argued:

- Key facts relevant to Mr H's cause of action were concealed from him at the Time of Sale and were only revealed when he sought advice.
- The time limits that apply should be postponed pursuant to section 32 of the LA ('S32').
- The investigator failed to consider the findings in *Smith v RBS.*

[1] *Smith and another v Royal Bank of Scotland [2023] UKSC 34 ("Smith v RBS")*

Mr H's complaint was passed to me to consider further. Having done so, whilst I was inclined to reach the same conclusion as our investigator, in some parts I did so for slightly different reasons, and in other's I wanted to take the opportunity to expand upon my reasoning. So, I issued a provisional decision ('PD') on 22 May 2025 giving Mr H and Lloyds Bank PLC the opportunity to respond to my findings below, before I reach a final decision.

In my PD I said:

> I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.
>
> What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.
>
> When considering what's fair and reasonable, DISP[2] 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.
>
> S75 provides consumers with protection for goods or services bought using credit. The evidence shows that Mr H paid for the Timeshare in 2011 under a pre-existing regulated Credit Agreement with the Lender. So, it isn't in dispute that S75 applies (subject to any restrictions or limitation). This means Mr H may be afforded the protection offered to borrowers like him under those provisions. And as a result, I've taken this section into account when deciding what's fair in the circumstances of this case.
>
> S140A looks at the fairness of the relationship between Mr H and the Lender arising out of the Credit Agreement (taken together with any related agreements). And because the product purchased was funded under that Credit Agreement, they're deemed to be related agreements.
>
> Given the facts of Mr H's complaint, relevant law also includes the LA. This is because the transaction - the purchase funded by the Credit Agreement with the Lender - took place in February 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.
>
> The claim that was submitted included a number of allegations that the Supplier misrepresented the original timeshare purchase in 1997. However, the PR has not provided any evidence to demonstrate that Mr H completed that purchase by making payments using a credit card provided to him by the Lender. And the Lender also doesn't appear to have accepted that it was involved in funding the 1997 purchase. With that being the case, I can't reasonably and confidently conclude that Mr H has met the requirements under the CCA to enable a successful claim to be made in relation to that purchase. With that being the case, I've gone on to consider the merits of Mr H's complaint about the Lender based upon his claim as it relates to the Timeshare purchase in 2011.
>
> <u>Mr H's complaint under s.75 CCA</u>
>
> Having considered everything, I don't think it would be fair or reasonable to uphold Mr H's complaint for reasons relating to the S75 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

[2] Dispute Resolution: Complaints Sourcebook

be available in court. So, it's relevant to consider whether Mr H's S75 claim was likely to be time-barred under the LA before it was put to the Lender.

A claim under S75 is essentially a "like" claim against the creditor. It mirrors the claim Mr H 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 Sale (2011). I say this because Mr H entered into the Purchase Agreement at that time based upon the alleged misrepresentations of the Supplier – which Mr H says he relied upon. And as the Credit Agreement with the Lender provided funding to help finance that purchase, it was when he used his credit card to make those payments that he allegedly suffered the loss.

It seems Mr H first notified the Lender of the S75 claim in January 2024. And as more than six years had passed between the Time of Sale and when he first put the claim to the Lender, I don't think it was ultimately unfair or unreasonable of the Lender to reject Mr H's concerns about the Supplier's alleged misrepresentations.

Could the limitation period be postponed?

The PR argue that the limitation period should be extended pursuant to s.32 LA because facts relevant to Mr H's complaint were concealed at the Time of Sale and only revealed when he sought advice.

The PR go on to reference what it believes to be relevant case law with the suggestion that the Supplier is guilty of fraud. And pursuant to S32, the time limitation under the LA should be postponed.

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"*. But the PR hasn't provided me with anything persuasive to suggest that either the Supplier or the Lender deliberately concealed anything about the Timeshare Mr H purchased or the Credit Agreement used to fund that purchase. And as I still can't see why, given the allegations fuelling Mr H's claim, this particular issue prevented him from making a claim or raising a complaint with the Lender earlier, my view is that this particular argument by the PR doesn't help his cause.

Mr H's unfair relationship complaint under s.140A CCA

The court may make an order under section 140B CCA in connection with a credit agreement if it determines that the relationship between the creditor (the Lender) and the debtor (Mr H) is unfair to the debtor because of one or more of the following (from S140A):

a) any of the terms of the agreement or of any related agreement;

b) the way in which the creditor has exercised or enforced any of the rights under the agreement or any related agreement;

c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).

In deciding whether to make a determination under this section the court shall have regard to all matters it thinks are relevant (including matters relating to the creditor and matters relating to the debtor).

Having carefully considered the original claim and subsequent Letter of Complaint it appears to specifically make reference to an allegation that the Supplier's *"conduct aids in establishing the basis of an unfair relationship between"* Mr H, the Supplier and the Lender. So, whilst there was no specific reference to a claim under S140A, I think it's reasonable to consider Mr H's complaint under that provision.

Only a court has the power to make a determination under S140A. But as it's relevant law, I've considered it when looking at the various allegations.

A claim under S140A is a claim for a sum recoverable by statute – which is also governed by Section 9 of the LA. As a result, the time limit for making such a claim is also six years from the date on which the cause for action accrued.

However, in determining whether or not the relationship complained of was unfair, the High Court held in *Patel v Patel* [2009] EWHC 3264 (QB) (which was more recently approved by the Supreme Court in the case of *Smith v RBS)* decided this could only be determined by *"having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination".* In that case, that was the date of the trial or otherwise the date the credit relationship ended.

So, having considered this, I believe the trigger point here is slightly different. Any relationship between Mr H and the Lender continues while the Credit Agreement remains live. So, that relationship only ends once the Credit Agreement ends and any borrowing under it has been repaid. The Lender has confirmed that Mr H's credit card account remained open until its closure in June 2018. And as Mr H's claim was submitted to the Lender in January 2024, it was made within six years of the credit relationship ending. So, with that being the case, I believe Mr H's complaint under S140A was made in time. So, it is those concerns that I will explore here.

- Misrepresentation

In determining if the relationship is unfair under S140A, I think the alleged misrepresentations are relevant here. Further, even though I think it likely they couldn't be considered under s.75 CCA due to the effects of the LA, I think they could still be considered under s.140A CCA[3]. So, in trying to establish whether I think a court would likely find that an unfair relationship existed, I've considered the alleged misrepresentations further in addition to the various other points raised in this complaint.

For me to conclude there was misrepresentation by the Supplier in the way that has been alleged, generally speaking, I would need to be satisfied, based on the available evidence, that the Supplier made false statements of fact when selling the Timeshare to Mr H. In other words, that the Supplier told Mr H something that wasn't true in relation to the allegations raised. I would also need to be satisfied that any misrepresentation was material in inducing Mr H to enter into the Purchase Agreement. This means I would need to be persuaded that he reasonably relied upon false statements when deciding to buy the Timeshare.

The crux of the misrepresentation claim seems to be an allegation that the Supplier told Mr H that the only way he could exit his existing timeshare was by entering into the Purchase Agreement in 2011 on the basis it provided an opportunity to surrender that new Timeshare after three years. And in doing so, Mr H would be released from any ongoing liability under the Purchase Agreement.

Having considered all the documentation, I can't reasonably say that was untrue. The Purchase Agreement did provide Mr H with the ability to surrender his timeshare. Furthermore, I've seen a letter from the Supplier to Mr H dated 19 May 2014 which

[3] See Scotland & Reast v. British Credit Trust Limited [2014] EWCA Civ 790

confirms to him *"that you rights have been terminated".* And as far as I'm aware, Mr H has not incurred any further or continuing liability under the Purchase Agreement since then.

However, the PR assert that the Supplier misrepresented Mr H's options to him at the Time of Sale. It suggests that the original timeshare (purchased in 1997) operated in perpetuity and argues that was not lawful. As I've already said, I can't find anything to suggest that the Lender is likely to have any responsibility or liability in relation to the original timeshare Mr H purchased in 1997. And from what I know of this particular type of timeshare, the purchase agreements were governed under English Law. And given when the product was purchased, it's likely they would have been governed under the Timeshare Regulations 1997 (which amended the Timeshare Act 1992). None of those provisions prohibited the sale of timeshares like the one Mr H bought.

However, the PR also argues that Mr H could have simply terminated that original timeshare by *"submitting* [his] *intention in writing quoting 'The Timeshare, Holiday Products, Resale and Exchange Contracts[4] 2010 S20 (4)'.*

I think it's helpful to look at what Regulation 20 of the Timeshare Regulations ('R20') says:

"Rights of withdrawal

20.*—(1) A consumer may withdraw from a regulated contract by giving the trader written notice of withdrawal during* ***the withdrawal period.***

(2) For the purposes of paragraph (1), written notice is to be regarded as having been given by the consumer at the time it is sent.

(3) The consumer does not have to give any reason for the withdrawal.

(4) The consumer may use the standard withdrawal form included in the contract under regulation 15(7) as the notice of withdrawal".

(Emphasis added)

Whilst R20 does indeed make provision for a consumer to cancel a timeshare purchase agreement, I think it is clear that right only applies to the period of withdrawl. The 1997 Timeshare Regulations included a similar provision.

Regulation 21 ('R21') goes on to say:

"The withdrawal period

21.*—(1) The withdrawal period for a regulated contract—*

(a)begins on the start date, and

(b)ends on the date which is 14 days after the start date, subject to the following provisions.

(2) The start date is the later of—

(a)the date of conclusion of the contract;

[4] The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ('The Timeshare Regulations')

(b)the date on which the consumer receives a copy of the contract".

In simple terms, under the Timeshare Regulations, the Supplier was required to provide Mr H with a withdrawal period of 14 days from the time the purchase was agreed in 1997. R20 does not extend that cancellation right for the entirety of the life of the timeshare product. So, I don't agree with the PR on that point.

I can't be certain about what Mr H was told (or not told) by the Supplier at the Time of Sale. And having considered all the evidence provided, I've not found anything to support the suggestion that the Supplier told Mr H that the only way to exit his original timeshare agreement was to enter into the new Purchase Agreement. And in any event, based upon my findings above, I can't see that the Timeshare Regulations did provide cancellation rights in the way the PR suggests.

- The annual maintenance fees

Several allegations have been made about the annual charges that Mr H was contractually obliged to pay under the Purchase Agreement he entered into. In particular, the complaint says:

> *"…management fees escalated significantly faster than* [Mr H was] *initially told they would, which increased the financial burden...".*

One of the main aims of the Timeshare Regulations was to enable consumers to understand the financial implications of their purchase so that they were/are put in the position to make an informed decision. And if a supplier's disclosure and/or the terms of a contract did not recognise and reflect that aim, and the consumer ultimately lost out or almost certainly stands to lose out from having entered into a contract whose financial implications they didn't fully understand at the time of contracting, that may lead to a breach the regulations that apply, resulting in the credit agreement potentially being found to be unfair under S140A.

However, the Supreme Court made it clear in *Plevin*[5] that it does not automatically follow that regulatory breaches create unfairness for the purposes of S140A. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

It appears Mr H was aware that he would need to pay some form of annual maintenance fee. They were referred to on a number of occasions in the Purchase Agreement. In particular, page 17 of the Purchase Agreement sets out the basis of how those fees are calculated. It's also not unusual for such agreements to include provisions for recalculation of those fees each year. So, I wouldn't consider increases to be out of the ordinary in themselves. Furthermore, and in the absence of any further supporting evidence, I don't think it's possible to reasonably assess the fairness (or otherwise) of their calculation and application here. And as I haven't seen any evidence to suggest that the requirement to pay those charges operated in such a way as to cause unfairness in Mr H's case, I can't reasonably conclude that they did.

Summary

Having carefully considered everything that's been said and provided, I can't reasonably conclude that the Lender's response to Mr H's complaint was ultimately either unfair or unreasonable. And whilst I do understand Mr H will be disappointed, I don't currently intend to ask the Lender to do anything more here.

As the time given for responses for my PD had ended, Mr H's complaint was passed back to me.

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[5] Plevin v. Paragon Personal Finance Limited UKSC/2014/0037

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.

In response to my PD, the Lender confirmed it had nothing further to add. However, the PR requested more time to respond in order that it could seek further instruction from Mr H. The PR subsequently wrote to this service to explain why it disagreed with my provisional findings. In doing so, it referred to *"various snippets of* [Mr H's] *written statement* […] *which we do not believe the Ombudsman has had sight of yet…".*

The PR went on to say:

> *"… the Ombudsman has not fully considered both the rationale of* [Mr H] *in entering into this agreement and the substance of the same which renders the* [credit] *relationship* […] *to be unfair…".*

I believe I've already acknowledged why Mr H says he entered into the new Purchase Agreement in my PD. I've also explained why I can't reasonably conclude that his decision was based upon anything the Supplier told him. There's simply no evidence from the Time of Sale to support that.

Quoting from Mr H's *"written statement"* the PR included:

> *"The Agreement gave us rights in perpetuity but it was not explained that this extended to obligations to pay also in perpetuity with no option to withdraw once the cooling off period passed and that the obligations then continued to our heirs after our deaths".*

This comment appears to refer to the timeshare product Mr H purchased in 1997. However, as I've already explained in my PD, I've seen no evidence to demonstrate that the Lender played any part in funding the purchase of that particular timeshare. So, it wouldn't be fair or reasonable for me to consider the circumstances of that purchase given the Lender has no apparent liability or responsibility for it under the various sections of the CCA that apply.

The PR went on to quote further from Mr H's *"written Statement"*:

> *"We were shown very smart apartments as representative of what we would get but in fact the apartments we later stayed in were never up to the same standard and often in need of complete redecoration".*
>
> *"It is our opinion that we were misled concerning the value of the investment, the possibility of resale, the quality of the accommodation and the in perpetuity aspect".*

In the first of these statements, it's unclear whether Mr H is referring to the timeshare product purchased in 1997 or 2011. And in any event, as I've already explained in my PD, I think any claim for such a misrepresentation under S75 is likely to be too late under the provisions of the LA.

On my reading of the allegation, it suggests that the Supplier may not have lived up to its side of the Purchase Agreement - in other words, that the Supplier was in breach of it. And whilst a proven breach of contract could be considered under S75, the time limit (under the LA) to make such a claim is the same as that for misrepresentation – i.e. six years from when the breach occurred. But Mr H voluntarily surrendered the Timeshare in 2014. And the complaint was made until 2024. So, it's clear to me that more than six years had passed before the allegation was raised.

The second statement above raises an allegation about *"the value of the investment".* However, it goes on to also reference the *"in perpetuity aspect".* The Timeshare purchased in 2011 did not operate in perpetuity. So, my reading of this suggests Mr H is referring to his 1997 purchase, which I'm unable to consider.

The PR argues that *"the Surrender Contract"* – the Timeshare purchased in 2011 – *"is inherently unfair"* as it was sold as the only way to exit the timeshare product purchased in 1997. I'm not persuaded by the PR's argument here. Ultimately, the (2011) Timeshare included an option to surrender it after three years – precisely what Mr H wanted. And in the meantime, as a points-based timeshare, it appears it offered more flexibility and holiday options given Mr H wasn't tied to one resort and/or apartment when using it. I'm unable to consider the fairness (or otherwise) of the preceding timeshare (from 1997) for the reasons already stated.

On a final point, the PR expands upon its arguments in relation to the *"Maintenance fees"* that Mr H was required to pay under the Purchase Agreement. In doing so, it quotes again from Mr H's *"witness statement"* where he says:

> *"The annual management fees started at £313 but rapidly increased year on year so that at the time that we paid to move into the points system in 2011, the stood at £609".*

Again, this appears to be in reference to the 1997 timeshare – which I'm unable to consider. Furthermore, it appears that the new Purchase agreement actually reduced the total level of annual charges Mr H was required to pay. So, I don't see how that requirement under the Purchase Agreement resulted in any unfairness.

My final decision

For the reasons set out above, I do not uphold Mr H's complaint about Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 17 July 2025.

Dave Morgan
Ombudsman