

## The complaint

Mr T's complaint is, in essence, that Clydesdale Financial Services Limited trading as Barclays Partner Finance ('BPF') acted unfairly and unreasonably by rejecting concerns he had about a Timeshare he purchased which was funded under a loan it provided to him.

## What happened

In or around October 2007 ('the Time of Sale'), Mr T (together with his wife) purchased membership of five specified timeshare weeks (the 'Timeshare') at an agreed purchase price of £24,937 (the 'Purchase Agreement'). To fund the Timeshare purchase, this amount was funded under a new fixed sum loan agreement with BPF (the 'Credit Agreement') over 120 months in Mr T's sole name. Because of that, Mr T is the only eligible claimant, and consequently complainant. I will therefore refer to Mr T only throughout my decision.

Mr T's loan with BPF was fully repaid and closed on 16 November 2009.

In or around 2023, BPF wrote to Mr T offering to review his Timeshare purchase and the related finance it had provided. Mr T completed and submitted a 'Review Request Form' provided by BPF which it received on 7 November 2023.

In January 2024, BPF wrote to Mr T confirming it had completed a review in respect of his Timeshare Purchase and the related Credit Agreement. Having taken into account the information provided by Mr T in the Review Request Form, BPF didn't believe Mr T would have suffered any detriment in relation to the Timeshare.

On 28 February 2024, Mr T - using a professional representative (the 'PR') – wrote to BPF. The PR told BPF, following Mr T's submission of the Review Request Form, he'd been advised that his complaint had been rejected. The PR asked BPF for an update about Mr T's complaint and, if rejected, the reasons why. BPF provided its acknowledgement in writing on 13 March 2024.

On 3 April 2024, having not yet completed its investigation into Mr T's complaint, BPF provided an update which included rights for Mr T to refer his complaint to the Financial Ombudsman Service. On 28 May 2024, BPF further responded to the PR giving reasons why its review of Mr T's Timeshare purchase experience had reached the conclusion it did.

On 25 September 2024, the PR wrote to BPF again. It was concerned that BPF had sent the original Review Request Form and accompanying questionnaire to Mr T direct to "*prevent [Mr T] from having the benefit of legal advice*". The PR asked that BPF provide a new questionnaire so that it could "*advise [Mr T] properly*".

On 19 November 2024, the PR provided BPF with a witness statement from Mr T which included various allegations. In particular:

- Previously purchased timeshare products had been purchased as an investment in 2003 in order that they could be subsequently sold at a profit.
- Having successfully sold timeshare weeks, Mr T purchased additional weeks as an investment in November 2003. However, those timeshare weeks remained unsold.
- In October 2007, agreed to purchase the Timeshare following the Supplier's agreement to take back his unsold weeks, incentivised by an offer to arrange financial assistance in the form of a loan from BPF – i.e. the Credit Agreement.

- This purchase was driven by assurances from the Supplier that the Timeshare would be put up for resale and generate a profit. Mr T understood that this was an investment.
- The Supplier's resale department subsequently advised Mr T the Timeshare was not selling leaving him with a "*substantial loan agreement*" and the associated "*yearly maintenance fees*".

BPF treated the witness statement submitted as a complaint about the outcome of its review of his Timeshare purchase experience. However, it thought Mr T's witness statement was inconsistent with the details he'd provided in the Review Request Form and questionnaire. So, BPF asked Mr T to provide more information and evidence so that the allegations could be considered further.

Having completed its investigation, BPF gave its final response in a letter to the PR on 19 November 2024. Having considered all the information provided, BPF rejected Mr T's complaint in its entirety whilst taking the opportunity to explain its review process.

On 14 February 2025, BPF wrote to the PR again with an updated final response which explained that Mr T's witness statement hadn't been considered before issuing its previous final response. However, BPF again rejected Mr T's complaint on all grounds.

Mr T didn't accept BPF's findings, so the PR referred his complaint to the Financial Ombudsman Service. Having considered all the evidence and information available, one of this service's investigators didn't think Mr T's complaint should be upheld. In particular, the investigator thought:

- Mr T's complaint suggesting the Lender's participation in a credit relationship that was unfair to him 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 (the "FCA") Dispute Resolution Rules ("DISP");
- Mr T's complaint about the Lender's decision to reject his 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.

The investigator also said that Mr T's complaint seemed to suggest there may also have been a breach of contract. However, there was no evidence of such a breach and Mr T had confirmed that his Timeshare had been cancelled in 2021. The investigator said that BPF had offered to consider a separate breach of contract claim subject to the provision of some additional information.

The PR didn't accept the investigator's findings. In doing so, it said:

- The primary reason for Mr T's complaint was BPF's rejection of his claim under its specific remediation scheme looking into the sale of timeshare products by the Supplier. And it is the outcome of that review that is being challenged.
- The investigator's assessment is unclear how the time limits under DISP 2.8.2R apply to the recent remediation scheme or how the Limitation Act 1980 (the 'LA') is relevant to that scheme.
- The investigator's findings fail to assess whether BPF's decision to reject Mr T's claim with the specific context and potential criteria of its own remediation scheme was fair and reasonable as opposed to a standard claim under the various provisions of the CCA.

The investigator wasn't persuaded to change their findings and said that this service is unable to consider a specific complaint about BPF's remediation scheme.

In response, the PR further emphasised that Mr T's complaint relates specifically to the outcome following BPF's review under its redress scheme rather than any claim or

complaint under the various provisions of the CCA. Furthermore, the PR argues in detail why it believes it is well within this service's remit to assess whether BPF has administered its own scheme fairly and consistently ensuring that any decision under that scheme was fair and reasonable.

As an informal resolution couldn't be reached, Mr T's complaint was passed 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 decided that the Financial Ombudsman Service does not have the jurisdiction to consider Mr T's complaint about the outcome of the review completed by BPF under its voluntary remediation scheme. And also about BPF's participation in and/or continuation of an unfair credit relationship under Section 140A of the CCA ('S140A'). I've explained my reasons for that in a separate decision.

Therefore, this decision specifically addresses Mr T's complaint about BPF unfairly deciding against paying a claim under Section 75 of the CCA ('S75').

### 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 Mr T) a right of recourse against lenders that provide the finance for the acquisition of goods or services (like the Timeshare purchased) from suppliers.

The concerns Mr T has about the sale of the Timeshare he 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.

S75 provides protection to consumers for goods or services bought using credit. Mr T paid for the Timeshare under a new Credit Agreement with BPF specifically for that purpose. So, it isn't in dispute that S75 applies here – subject to any restrictions and limitations. So, where the requirements of the CCA are met, it means Mr T is afforded the protection offered to borrowers like him 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.

Given the facts of Mr T's complaint, relevant law also includes the Limitation Act 1980 (the "LA"). This is because the original transaction - the purchase funded by the Credit Agreement with BPF - took place in October 2007. 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.

### Mr K's S75 complaint

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

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

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 Mr T's S75 complaint made in time?

As far as Mr T'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, the Lender refused to accept and reimburse Mr T under the claim initiated in February 2024 which was further highlighted in Mr T's witness statement from November 2024. So, the primary time limit of six years only started once the Lender responded – here that was in writing in February 2025. And as this complaint about the Lender's handling of Mr T's complaint was referred to this service in March 2025, 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 Mr T's complaint, I've considered the allegations and circumstances further.

#### Mr T's misrepresentation complaint under S75

Having done so, I don't think it would be fair or reasonable to uphold Mr T'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 Mr T'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 Mr T 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 Mr T entered into the purchase of the Timeshare at that time based upon the alleged misrepresentations of the Supplier – which Mr T says he relied upon. And as the Credit Agreement with BPF provided funding to help finance that purchase, it was when he entered into the Credit Agreement that he allegedly suffered the loss.

Mr T first notified the Lender of his concerns in February 2024 and later expanded upon them in a witness statement in November 2024. And as substantially 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 not to uphold his concerns about the Supplier's alleged misrepresentations.

I appreciate that Mr T will be very disappointed, but I will not be asking BPF to do anything more.

**My final decision**

For the reasons set out above, I do not uphold Mr T'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 Mr T to accept or reject my decision before 17 July 2025.

Dave Morgan  
**Ombudsman**