

## The complaint

Mr B has complained about several matters arising out of a loan taken from Clydesdale Financial Services Limited (the 'Lender') to pay for a timeshare.

## What happened

In or around October 2007, Mr B – together with his wife – agreed to trade in an existing timeshare holding towards the purchase of a new timeshare interest (the 'Timeshare') from a timeshare provider (the 'Supplier'). They entered into an agreement with the Supplier to purchase two floating timeshare weeks at a cost of £40,000 (the 'Purchase Agreement').

Having paid an initial deposit of £1,000, the total purchase price was funded under two "*Buy now pay later*" finance agreements. One of those agreements was for £20,000 in Mr B's sole name (the 'Credit agreement'). Upon drawdown under the credit agreements, the original deposit paid was refunded. All amounts due under Mr B's Credit Agreement were repaid on 2 May 2008.

In or around 2013, Mr B (together with his wife) decided to trade in the Timeshare towards the purchase of a replacement timeshare product.

On 7 July 2023, the Lender wrote to Mr B offering to review the sales process and finance arrangements relating to the Timeshare he purchased in 2007. Mr B completed a 'Review Request Form' which he dated 4 August 2023 before returning it to the Lender. The Lender wrote to Mr B again on 12 December 2023 confirming its completion of the review. It said it did not believe Mr B would have suffered any detriment in relation to the Timeshare.

In response, Mr B wrote to the Lender on 18 January 2024 (the 'Letter of Complaint'). In doing so, he raised various concerns about the Timeshare Purchased together with the Credit Agreement used to fund the purchase. Mr B alleged:

- The Purchase Agreement was in contravention of Spanish Legislation as:
  - no cooling off period was provided; and
  - a deposit (advance payment) was taken from him by the Supplier.
- The Lender failed to complete the necessary and required due diligence to ensure:
  - the Credit Agreement was sustainably affordable for Mr B; and
  - the funds advanced under the Credit Agreement were used to fund a Purchase Agreement that complied with Spanish Legislation.

Mr B also asked why another consumer's review had resulted in a refund while his hadn't. He also said that the Timeshare was no longer working for him and he was not able to sell it, resulting in his decision to trade it in against the purchase of a further timeshare in 2013. However, the provider of that new timeshare went into liquidation resulting in financial losses for him.

The Lender issued its final response to Mr B on 9 January 2025 rejecting his complaint on all grounds. So, Mr B referred his complaint to the Financial Ombudsman Service.

One of this service's investigators considered all the evidence and information available, taking into account the relevant law and regulations. In particular, the investigator considered Mr B's complaint under the various provisions of the Consumer Credit Act 1974 – as amended (the 'CCA'). Having done that, the investigator thought:

- Mr B's complaint suggesting the Lender's participation in a credit relationship that was unfair to him pursuant to section 140A of the CCA ('S140A') 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').
- Mr B'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 the Lender didn't act unfairly or unreasonably by coming to the decision it did.
- Mr B's complaint about the Lender's decision to reject concerns about a breach of contract by the supplier of the replacement timeshare (in 2013) was made in time under DISP 2.8.2 R (2), but there was no evidence to show that the Lender had provided any finance to fund that particular purchase such that it could be held responsible under the various provisions of the CCA.

Mr B didn't agree with the investigator's findings, and in doing so, made the following arguments:

- He only became aware of his cause for complaint upon receiving a letter from the Lender in 2023 offering to review his purchase and the funding provided.
- Prior to that invitation., Mr B had no knowledge of Spanish Timeshare Law or the checks the Lender was required to carry out.
- For six years (following the purchase) Mr B experienced no problems until booking availability became an issue prompting his to seek to attempt to sell his Timeshare, albeit without success.

As an informal resolution couldn't be achieved, Mr B'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.

#### 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 B) 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 B has about the sale of the product 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.

Section 75 of the CCA ('S75') provides protection to consumers for goods or services bought using credit. Mr B paid for the Timeshare under a Credit Agreements with the Lender 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 B 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.

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

S140A looks at the fairness of the relationship between Mr B and the Lender arising out of the Credit agreement (taken together with any related agreements). And because the product purchased was funded under the Credit Agreement, they're deemed to be related agreements.

Given the facts of Mr B'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 the Lender - 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.

Having considered everything, I decided:

- This service's jurisdiction doesn't permit me to consider Mr B's complaint about the outcome of the Lender's voluntary redress exercise as it isn't a regulated activity for the purposes of DISP 2.3.1
- This service's jurisdiction doesn't permit me to consider the merits of Mr B's complaint about the Lender's participation in an 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 in a separate decision.

However, 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 (the Lender) 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 B's S75 complaint made in time?

As far as Mr 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, the Lender refused to accept and reimburse Mr B under the claim initiated in January 2024. So, the primary time limit of six years only started once the Lender responded – here that was in writing on 9 January 2025. And as this complaint about the Lender's handling of Mr B's complaint was referred to this service in February 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 B's complaint, I've considered the allegations and circumstances further.

### Mr B's misrepresentation complaint under S75

Having done that, I don't think it would be fair or reasonable to uphold Mr 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 Mr B's S75 claim was time-barred under the LA before it was put to the Lender.

As I've explained, a claim under S75 is a "like" claim against the creditor. It essentially mirrors the claim Mr 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 Mr B entered into the purchase of the Timeshare Products at that time based upon the alleged misrepresentations of the Supplier – which Mr B says he relied upon. And as the Credit Agreement with the Lender provided funding to help finance that purchase, it was when he entered into the Credit Agreement that he allegedly suffered the loss.

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

### Mr B's claim for breach of contract under S75

Mr B describes how he later found his Timeshare was no longer working for him and despite his efforts, he couldn't sell it. So, he decided to trade in the Timeshare towards the purchase of a different timeshare product in 2013. However, the supplier of that timeshare later entered a liquidation process resulting in him being unable to use that timeshare product – essentially breaching that purchase agreement.

Having considered all the evidence provided, I found nothing to suggest that the Lender here provided any finance to assist with that purchase. Because of that, I can't see how the Lender could be held responsible for any breach of the associated purchase agreement under the provisions of S75.

I do appreciate that Mr B will be very disappointed, but I will not be asking the Lender to do anything more here.

### **My final decision**

For the reasons set out above, I do not uphold Mr B's complaint about Clydesdale Financial Services Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 September 2025.

Dave Morgan  
**Ombudsman**