

## **The complaint**

Ms S's complaint is, in essence, that Clydesdale Financial Services Limited trading as Barclays Partner Finance ('the Lender'), acted unfairly and unreasonably by:

- (1) Being party to an unfair credit relationship with her under Section 140A of the Consumer Credit Act 1974 ('CCA').
- (2) Deciding against paying a claim made under Section 75 of the CCA.
- (3) Providing the loan through an unauthorised credit intermediary.
- (4) Lending to Ms S irresponsibly

## **What happened**

Ms S and Ms B purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 31 October 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,200 fractional points at a cost of £16,539 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Ms S and Ms B more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends.

Ms S and Ms B paid for their Fractional Club membership by trading in an existing timeshare membership at a value of £3,995 and taking finance from the Lender (the 'Credit Agreement') in Ms S's name only (which is why only she is eligible to complain about the Lender).

Ms S paid off the loan, and her credit relationship with the Lender ended, on 12 November 2015 – when Ms S and Ms B traded in their membership towards a further purchase of Fractional Club membership.

Ms S – using a professional representative (the 'PR') – wrote to the Lender on 18 August 2022 (the 'Letter of Complaint') to raise several different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Ms S's concerns as a complaint and issued its final response on 22 August 2022, rejecting it on every ground.

The complaint was referred to the Financial Ombudsman Service on 24 October 2022. It was assessed by an Investigator who, having considered the information on file, said that the complaint about an unfair credit relationship was outside of the jurisdiction of the Financial Ombudsman Service, and the remainder of the complaint should not be upheld.

Ms S disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I issued a jurisdiction decision explaining that I could not look into complaint point (1) above because it was referred to the Financial Ombudsman Service too late under the relevant rules. But I could look into the remainder of the complaint. As such, this final decision deals with complaint points (2), (3) and (4).

### **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.

#### **Complaint about the Lender's rejection of Ms S's Section 75 claim**

I don't think it would be fair or reasonable to uphold this complaint. As a general rule, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act. This is because it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court. So, it is relevant to consider whether Ms S's Section 75 claim was time-barred under the Limitation Act before she put it to the Lender.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim the consumer 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 Limitation Act).

But a claim under Section 75 is also 'an action to recover any sum by virtue of any enactment' under Section 9 of the Limitation Act. 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 was the Time of Sale. I say this because Ms S entered into the purchase of her timeshare at that time based on the alleged misrepresentations of the Supplier – which she says she relied on. And as the loan from the Lender was used to help finance the purchase, it was when she entered into the Credit Agreement that she suffered a loss.

Ms S first notified the Lender of her Section 75 claim on 18 August 2022. And as more than six years had passed between the Time of Sale and when she first put her claim to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Ms S's concerns about the Supplier's alleged misrepresentations.

#### **Complaint about the credit being brokered by an unauthorised credit intermediary**

The PR alleges that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement.

However, the credit intermediary named on the Credit Agreement held interim permission from the Financial Conduct Authority to act as a credit broker at that time. In any case, Ms S knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for Ms S, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that caused Ms S a financial loss – such that it would be fair and reasonable to tell the Lender to compensate Ms S, even if the loan wasn't arranged properly.

## **Complaint about irresponsible or unaffordable lending**

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The PR says that the right checks weren't carried out before the Lender lent to Ms S. I haven't seen anything to persuade me that was the case in this complaint given its circumstances, nor that the money lent to Ms S was actually unaffordable. So, from the information provided, I am not satisfied that the lending was irresponsible or unaffordable at the Time of Sale.

### **My final decision**

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 23 September 2025.

Phillip Lai-Fang  
**Ombudsman**