DRN-5776889

The complaint

Mr R has complained about matters arising out of a loan taken from Clydesdale Financial Services Limited trading as Barclays Partner Finance ('the Lender') to pay for a timeshare he purchased.

What happened

Mr R (together with another) purchased a timeshare product (the 'Timeshare') from a timeshare provider (the 'Supplier') on or around 18 September 2008 (the 'Time of Sale'). The purchase price agreed of £15,568 (the 'Purchase Agreement') was funded by an initial deposit paid of £1,557, with the balance of £14,011 funded under a finance agreement with the Lender (the 'Credit Agreement') in Mr R's sole name. So, whilst the Timeshare was purchased in joint names, Mr R is the only eligible claimant (and complainant) under the Credit Agreement. Because of that, I shall refer only to Mr R throughout this decision.

In September 2024, using a professional representative (the 'PR'), Mr R submitted a claim to the Lender which (in summary) included:

- Misrepresentations by the Supplier at the Time of Sale giving Mr R a claim against BPF under Section 75 ('S75') of the CCA (the 'Consumer Credit Act 1974 – as amended'), which the Lender failed to accept and pay.
- The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA ("S140A").

The PR also provided details of a judgment issued by a Spanish court in Mr R's favour which declared the Purchase Agreement null and void and made an award against the Supplier in Mr R's favour totalling £28,333.76 (plus interest). However, the Supplier entered into an insolvency process, so Mr R has not received any payment under the Spanish court's award. The PR wanted the Lender to *"consider this amount as a claim under the equal liability rules contained within the* [CCA]*"*.

The Lender dealt with Mr R's concerns as a complaint under the various sections of the CCA and issued its final response letter on 30 September 2024, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

Having considered all the available evidence and arguments, I was inclined to reach the same outcome as our investigator. But in doing so, I wanted to provide some additional reasoning and also expand on some other parts in order to provide more clarity. So, I issued a provisional decision ('PD') on 14 August 2025 giving Mr R and Clydesdale Financial Services Limited trading as Barclays Partner Finance the opportunity to respond to my findings before I reach a final decision.

In my PD, I found that:

1. Mr R's complaint about a credit relationship with the Lender that is alleged to be

unfair to him isn't within our jurisdiction because it wasn't referred to this service within the time limits set out in DISP 2.8.2 R (2);

2. Mr R's complaint that the Lender unfairly rejected his claim for misrepresentation of the Timeshare is within our jurisdiction as it was referred to this service within the time limits set out in DISP 2.8.2 R (2). But the Lender's decision not to uphold it wasn't unfair or unreasonable.

The Lender acknowledged receipt of my PD and confirmed it has nothing further to add.

On behalf of Mr R, the PR acknowledged receipt of my PD. In doing so, it also said that neither it nor Mr R has any additional evidence to add. However, Mr R did want it known that he wasn't aware he could raise a complaint until he started to receive approaches from timeshare claims businesses, whereupon he engaged one such business to pursue a claim through the Spanish courts. Mr R confirms he would have made a claim earlier, had he known he was able to do so.

Mr R's complaint was passed back to me to reach a final decision.

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 still don't think Mr R's complaint should be upheld insofar as it relates to his concerns about the Lender's responsibilities under S75 for the alleged misrepresentation. I've issued a separate decision confirming this service's jurisdiction to consider the various other aspects of Mr R's complaint.

For completeness (and where relevant to this particular decision), my PD included the following:

> <u>Relevant considerations</u>
>
> When considering what's fair and reasonable, DISP[1] 3.6.4R requires me 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 R) 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 R 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.
>
> S75 provides protection for consumers for goods or services bought using credit. Mr R paid for the Timeshare under a new Credit Agreement in his sole name 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 R 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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[1] DISP - The Dispute Resolution: Complaints Sourcebook – Part of the Financial Conduct Authority ('FCA') handbook

Given the facts of the Mr R'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 September 2008. 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.

<u>Mr R's misrepresentation complaint under S75</u>

I don't think it would be fair or reasonable to uphold Mr R'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 R'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 R 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 R entered into the purchase of the timeshare product at that time based upon the alleged misrepresentations of the Supplier – which Mr R 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.

The PR first notified the Lender of Mr R's S75 complaint in September 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.

<u>The Spanish court judgment</u>

The primary reason for the PR's referral of Mr R's complaint to the Lender relates to a judgement in Mr R's favour issued by a Spanish court on 7 November 2022. Mr R says he has not received any payment from the Supplier under that judgment. And the Supplier has since entered an insolvency process. The PR believes the Lender is equally liable for any award made in Mr R's favour by the Spanish Court.

As I've already explained above, S75 imposes on the lender a "like claim" to that which the borrower enjoys against the supplier. The PR suggests that the Lender shares equal liability under the Spanish judgment. However, this particular claim fails as I don't agree that the Lender shares that liability in the way the PR suggests.

> The Spanish judgment states that the contract (the Purchase Agreement) is null and void. In some instances, that would mean the Credit Agreement could be voided too. However, I can't see that the Spanish judgment legally binds the Lender. In particular, as the Lender wasn't party to the proceedings – nor was it involved in them in any way at all.
>
> Furthermore, having not seen the original full Purchase Agreement, it's unclear under which legal jurisdiction it was drawn up. And in any event, I think it's questionable whether an English (or Scottish court in Mr R's case) would accept that the contract has been validly voided under the Spanish judgement.
>
> I do understand and appreciate that Mr R will be very disappointed. But I can't reasonably say that the Lender's response to his claim/complaint was unfair and unreasonable. And because of that, I do not intend to ask it to do anything more here.

In the absence of anything new to consider here, I've no reason to vary from the findings set out in my PD. And because of that, 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 R'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 R to accept or reject my decision before 24 September 2025.

Dave Morgan
Ombudsman