

The complaint

Mrs R'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 them 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 Mr and Mrs T irresponsibly.

What happened

Mrs R purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 28 January 2015 (the 'Time of Sale'). she entered into an agreement with the Supplier to buy 1,180 fractional points at a cost of £18,134 after trading in their existing trial timeshare membership (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mrs R 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.

Mrs R paid for their Fractional Club membership by taking finance of £21,698 from the Lender (the 'Credit Agreement'). The additional amount was used to pay off a previous loan used to pay for trial timeshare membership. Mrs R paid off the loan, and her credit relationship with the Lender ended, on 28 October 2015.

Mrs R – using a professional representative (the 'PR') – wrote to the Lender on 10 February 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 didn't provide a final response to the complaint but told the Financial Ombudsman Service that it had a limitation defence to the claims made, in that they were made too late under the provisions of the Limitation Act 1980.

The complaint was referred to the Financial Ombudsman Service on 16 January 2023. It was assessed by an Investigator who, having considered the information on file, said that the complaints about an unfair credit relationship and irresponsible lending were outside of the jurisdiction of the Financial Ombudsman Service, and the remainder of the complaint should not be upheld.

Mrs R disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. I previously issued a decision explaining which parts of this complaint I could and could not consider. This final decision deals with those

parts of the complaint that I can consider, being points (2) and (3) above.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context here.

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.

I've decided not to uphold this complaint. Before I explain why, 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.

Complaint about the Lender's rejection of Mrs R's Section 75 misrepresentation claim

I don't think it would be fair or reasonable to uphold this complaint. Generally, 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 investigate 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 Mrs R'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 Mrs R entered 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.

Mrs R first notified the Lender of her Section 75 claim on 10 February 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 Mrs R'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, Mrs R 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 Mrs R, 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 Mrs R a financial loss – such that it would be fair and reasonable to tell the Lender to compensate Mrs R, even if the loan wasn't arranged properly.

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 Mrs R to accept or reject my decision before 29 October 2025.

Phillip Lai-Fang
Ombudsman