

The complaint

Mr G has complained that Clydesdale Financial Services Limited, trading as Barclays Partner Finance ("BPF"), acted unfairly and unreasonably by being a party to an unfair debtor-creditor relationship with him under s.140A of the Consumer Credit Act 1984 ("CCA") and deciding against paying a claim under s.75 CCA.

What happened

In May 2012 ("the Time of Sale"), Mr and Mrs G took out a timeshare membership with a timeshare provider ("the Supplier"). The membership cost £39,806, but after trading in another membership, they were left with a balance of £7,293 to pay. This was paid by Mr G taking out a loan for that amount in his sole name. Mr G paid off the loan in February 2013.

In November 2019, Mr G used a professional representative ("PR") to make a complaint to BPF about the purchase and associated loan¹. In short, it was alleged:

- The Supplier was not authorised by the Financial Conduct Authority ("FCA") to arrange the credit between Mr G and BPF.
- Mr and Mrs G had found it increasingly difficult to book holidays with the Supplier following the Time of Sale.
- The Management Charges increased every year, even though they were unable to fully use the resorts.
- Mr and Mrs G were told that their membership would end on a set future date, when that was not guaranteed.
- Mr and Mrs G were not told that their children might be forced to inherit the membership.
- The timeshare membership was an Unregulated Collective Investment Scheme ("UCIS"), the promotion of which was unlawful.
- The interest rate charged was high, which was an unfair contract term.

All of this led to unfair credit relationships as defined by s.140A CCA. Further, the Supplier had misrepresented matters to them during the sales which meant BPF was liable under s.75 CCA.

BPF did not give a full answer to the complaint, and so PR referred a complaint to our service on Mr G's behalf.

After this, BPF wrote to PR to set out its position on Mr G's complaint. It said that the complaints had been made too late under the Limitation Act 1980 ("LA"), and so it did not need to do anything further. PR responded to say it disagreed with BPF's stance. It said the following (in doing so expanded the scope of the complaint):

- The Supplier had pressured Mr and Mrs G into taking out the timeshare membership as way of recovering the money they had previously paid for an earlier membership.

¹ As Mr G was the only person named on the loan agreement, only he can bring this complaint. However, I will refer to Mr and Mrs G where relevant.

- The timeshare had been sold to them as a form of investment.
- Mr G complained within three years of when he realised he had cause for complaint after he spoke with PR.
- PR argued that the relationship between BPF and Mr G continued past the date he paid off the loan as he continued to pay maintenance fees to the Supplier.
- The Supplier failed to undertake any checks to make sure the loan was affordable for Mr G at the Time of Sale.

One of our investigators considered the complaint, but did not think BPF needed to do anything further. He thought the claim that there were misrepresentations under s.75 CCA had been made too late under provisions of the LA. He also thought that any complaint that BPF was a party to an unfair debtor-creditor relationship, as defined by s.140A CCA had been made too late for our service to consider.

PR responded on behalf of Mr G to say it disagreed with what our Investigator had said. It argued that Mr G's complaint was made on the basis that there was an unfair credit relationship as the membership had been sold as an investment (breaching the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010). The reasons our Investigator gave for saying that Mr G ought to have realised he had cause for complaint did not go to that issue. It also pointed to a number of court judgments that it said were relevant when thinking about the time Mr G had to make his complaints, arguing that the Supplier concealed the fact that the membership was an investment. So, PR asked for an ombudsman to review the complaint.

In this decision I will deal solely with the complaint that BPF did not fairly deal with Mr G's claim under s.75 CCA and the broker's authorisation. The remainder of their complaint will be dealt with in a separate decision.

What I have 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.

Mr G said that the Supplier misrepresented the nature of the membership when he bought it and that he has a claim for misrepresentation against the Supplier.

Under s.75 CCA, BPF could be jointly liable for the alleged misrepresentations made by the Supplier. But BPF argued that any claim brought by Mr G for any alleged misrepresentations was made too late. I have considered that argument and, having done so, I agree with what BPF has said. For the avoidance of doubt, I have not decided whether the limitation period has expired as that would be a matter for the courts should a legal claim be litigated. Rather, I have considered whether BPF acted fairly in turning down the claim.

Our service normally thinks it would be fair and reasonable for a creditor to rely on the LA as an answer to a claim under s.75 CCA. This is because it would not normally be fair to expect lenders to look into a claim that has been made outside of the limitation periods, so long after the liability arose and after a limitation defence would have become available in court. So I think it is relevant to consider whether BPF has a limitation defence under the LA when thinking about a fair answer to Mr G's complaint.

It was held in *Green v. Eadie & Ors* [2011] EWHC B24 (Ch) that a claim under s.2(1) of the Misrepresentation Act 1967 is an action founded on tort for the purposes of the LA; therefore, the limitation period expires six years from the date on which the cause of action accrued (s.2 LA). Here Mr G brought a like claim against BPF under s.75 CCA and the limitation period for the corresponding like claim would be the same as the underlying

misrepresentation claim. Therefore, the limitation period for the s.75 claim expires six years from the date on which the cause of action accrued.

The date on which a 'cause of action' accrued is the point at which Mr G entered into the agreement to buy the timeshare. It was at that time that he entered into an agreement based, he says, on the misrepresentations of the Supplier and suffered a loss. He says, had the misrepresentations not been made, he would not have bought the timeshare. And it was on that day that he suffered a loss, as he took out the loan agreement that he was bound to and says he would have never taken out but for the misrepresentations. It follows, therefore, that the causes of action accrued in May 2012, so Mr G had six years from then to bring a claim. But he did not make a claim against BPF until November 2019, which was outside of the time limits set out in the LA. So, I think BPF acted fairly in turning down this misrepresentation claim.

The LA provides for extensions of the time limits in certain circumstances. However, having considered everything, I cannot see any reason for the limitation period to be extended. PR has pointed to s.32 LA, and associated case law, which extends the time to start litigation in certain circumstances. In particular, it says matters were deliberately concealed from Mr G, arguing that it was concealed that the timeshare membership ought not to have been marketed as an investment. But I cannot see how that was a matter that went to any claim Mr G may have for misrepresentation, so I cannot see how s.32 LA helps him.

Further, even if I were to find that Mr G had longer to bring a claim under s.75 CCA, it would inevitably fail for another reason. S.75 CCA only applies to purchases between £100 and £30,000, however here the cost of the membership was £39,806. So s.75 CCA simply did not apply to this transaction in the way put forward by PR.

I have also considered the complaint that the loan arranged was not done so by an authorised intermediary. The reasons behind this were first set out in full after our Investigator issued their view and BPF has never given its full answer to it. However, I think it is fair to answer this part of the complaint. I note that there are three different entities that could have arranged the loan – the business named on the timeshare purchase agreement, the business named as an intermediary on the loan agreement or the business named by BPF as the retailer on the face of the account statement. The first and last of those were authorised by the Office of Fair Trading at the Time of Sale, the middle of those had been authorised, but it had expired by the Time of Sale. However, even if the loan had been arranged by the entity that was not authorised at the relevant time, that is not an end of the matter. Even if the loan had been arranged by an unauthorised credit intermediary, it might mean the loan was not enforceable whilst it was live. However, at the Time of Sale, there was no right to recover any money paid under the agreement or seek compensation for loss.² And I noted that Mr G clearly knew what how much he was borrowing, from whom and for how long. So I cannot see any reason why BPF is liable to pay anything, even if PR's underlying argument that the loan was improperly arranged had merit.

Finally, I note that in the original complaint, PR argued that Mr G's membership constituted a UCIS. I do not think this argument is being pursued any longer, but for the avoidance of doubt, following the judgment in *R (on the application of Shawbrook Bank Ltd) v. Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v. Financial Ombudsman Service* [2023] EWHC 1069 (Admin), it is clear that this timeshare membership is not a UCIS.

² See <https://www.fca.org.uk/firms/validation-orders#:~:text=a%20Validation%20Order.-,Validation%20of%20existing%20agreements,unenforceable%20agreement%20to%20be%20enforced>.

Given all of this, I cannot see any reason why it would be fair or reasonable to direct BPF to do anything further to resolve this complaint.

My final decision

My final decision is that Clydesdale Financial Services Limited, trading as Barclays Partner Finance acted fairly in turning down Mr G's claim under s.75 CCA and I do not direct it do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 27 October 2025.

Mark Hutchings
Ombudsman