

The complaint

Mr J's complaint is, in essence, that Clydesdale Financial Services Limited, trading as Barclays Partner Finance ('the Lender'), acted unfairly and unreasonably by deciding against paying a claim made under Section 75 of the Consumer Credit Act 1974 ('CCA') and providing lending to pay for a contract that is null and void.

What happened

Mr J purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 3 March 2015 (the 'Time of Sale'). Mr J paid for his Fractional Club membership by taking finance from the Lender (the 'Credit Agreement'). Mr J paid off the loan, and his credit relationship with the Lender ended, on 17 April 2015.

Mr J – using a professional representative (the 'PR') – wrote to the Lender on 17 November 2021 (the 'Letter of Complaint') to raise a number of 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.

As the Lender did not issue a final response to the complaint, the PR referred it to the Financial Ombudsman Service on 16 September 2022. It was assessed by one of our Investigators who, having considered the information on file, said that Mr J's concerns about an unfair credit relationship had been made out of time, and the remainder of his complaint should not be upheld.

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

I recently issued a decision concerning our jurisdiction to consider Mr J's complaint. I concluded that his complaint about an unfair credit relationship had been made out of time, but his complaints about the Lender's rejection of his Section 75 claim and provision of lending to pay for a contract that was null and void had been made in time.

Therefore, this final decision relates solely to Mr J's complaints about the Lender's rejection of his Section 75 claim and provision of lending to pay for a contract that he considers to be null and void.

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 Mr J's Section 75 claim

This part of Mr J's complaint was made for several reasons, which included that the Supplier misrepresented the Fractional Club membership at the Time of Sale as it told him he had purchased an investment which would considerably increase in value and that he would have access to the Allocated Property at any time.

Generally, creditors can reasonably reject Section 75 claims that they are first made aware of after the claim has become time-barred under the Limitation Act (the 'LA'), as it wouldn't be fair to expect them to look into such claims so long after the liability arose, and after a limitation defence would have been available in court. Therefore, it's relevant to consider whether Mr J's Section 75 claim was time-barred under the LA before he put it to the Lender.

A claim under Section 75 is a "like claim" against the creditor. It in effect mirrors the claim a consumer could make against the Supplier.

A claim for misrepresentation against the Supplier would typically 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).

However, a claim under Section 75, like the one in question here, is also "an action to recover any sum by virtue of any enactment" under Section 9 of the LA. 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. That's when Mr J entered into the purchase of his timeshare based on the alleged misrepresentations of the Supplier – which he says he relied on. Further, as the loan from the Lender was used to help finance the purchase, it was when he entered into the Credit Agreement that he suffered a loss.

Mr J first notified the Lender of his Section 75 claim on 17 November 2021. Given more than six years had passed between the Time of Sale and when he first put his claim to the Lender, in my view it was neither unfair nor unreasonable that the Lender rejected his concerns about the Supplier's alleged misrepresentations.

Complaint about providing lending to pay for a contract that is null and void

The PR argues that, because the Purchase Agreement was unlawful under Spanish law in light of certain information failings by the Supplier, I should treat that Agreement and the Credit Agreement as rescinded by Mr J and award him compensation accordingly – in keeping with the judgment of the UK's Supreme Court in *Durkin v DSG Retail* [2014] UKSC 21 (*'Durkin'*).

However, as the Lender hasn't been party to any court proceedings in Spain, it seems to me that there is an argument for saying that the Purchase Agreement is valid under English law for the purposes of *Durkin*.

I also note that the Purchase Agreement is governed by English law. So, it isn't at all clear that Spanish law would be held relevant if the validity of the Purchase Agreement was litigated between its parties and the Lender in an English court. For example, in *Diamond Resorts Europe and Others* (Case C-632/21), the European Court of Justice ruled that, because the claimant lived in England and the timeshare contract was governed by English law, it was English law that applied, not Spanish, even though the latter was more favourable to the claimant in ways that resemble the matters seemingly relied upon by the PR.

Overall, therefore, in the absence of a successful English court ruling on a timeshare case paid for using a point-of-sale loan on similar facts to this complaint, and given the facts and circumstances of this complaint, I'm not persuaded that it would be fair or reasonable to uphold it for this reason.

Conclusion

For the reasons provided, I do not think that the parts of Mr J's complaint the Financial Ombudsman Service is able to consider should be upheld.

My final decision

My final decision is that I do not uphold Mr J's complaint about Clydesdale Financial Services Limited, trading as Barclays Partner Finance, regarding its rejection of his Section 75 claim and provision of lending to pay for a contract that he considers to be null and void.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 12 November 2025.

Alex Salton
Ombudsman