

The complaint

Mr K'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 him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA'), (2) lending to him irresponsibly, (3) providing credit through an unauthorised credit broker, and (4) deciding against paying claims under Section 75 of the CCA.

What happened

Mr K purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 26 March 2014 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy fractional points (the 'Purchase Agreement').

Mr K paid for his Fractional Club membership by taking finance of £11,294 from the Lender (the 'Credit Agreement').

Mr K – using a professional representative (the 'PR') – wrote to the Lender on 20 January 2022 (the 'Letter of Complaint') to raise several different concerns. Since then, the PR has raised some further matters it says are relevant to this outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr K's concerns as a complaint and issued its final response letter on 18 May 2022, 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.

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

I issued a provisional decision explaining that I could not consider complaint points (1) and (2) because those complaints were made outside of the relevant time limits, and that I was not planning to uphold complaint points (3) and (4).

The PR disagreed and provided some further comments for me to consider.

I then issued a jurisdiction decision confirming I can only consider complaint points (3) and (4). And that is what I will deal with in this final decision.¹

¹ The PR also raised concerns about commission but has since accepted that a complaint about this will not succeed outside of the unfair relationship complaint – which I cannot consider. As such, I do not need to cover that in this decision.

I later sent an email to the Lender and the PR explaining my provisional findings on commission, which were that the commission arrangements between the Lender and Supplier did not create an unfair relationship between the Lender and [consumer].

The Lender did not respond to my provisional decision or my provisional findings on commission.

The PR responded to say that it accepted my provisional findings on commission, but it disagreed with my provisional decision overall and provided some comments and documents it wanted me to consider when making my 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 so, and for the same reasons set out in my provisional decision (which I repeat below), I do not uphold this complaint.

Mr K's complaint that the credit broker was not authorised

The PR has argued that 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, it looks to me like Mr K knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for Fractional Club membership. So, 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 Mr K a financial loss. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate him, even if the loan wasn't arranged properly.

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

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 1980 (the 'LA') as 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 Mr K's Section 75 claim for misrepresentation was time-barred under the LA before he put it to the Lender.

As I mentioned above, a claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim Mr K 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, like the one in question here, under Section 75 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 was the Time of Sale. I say this because

Mr K entered the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which he says were relied upon. And 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 K first notified the Lender of his Section 75 claim on 20 January 2022. And as more than six years had passed between the Time of Sale (26 March 2014) and when that claim was first put to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mr K's concerns about the Supplier's alleged misrepresentations.

Section 75 of the CCA: the Supplier's Breach of Contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

As noted above when looking at the claim there was an unfair credit relationship, Mr K says that he could not holiday where and when he wanted to. On my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, meaning it could be viewed as potentially breaching the Purchase Agreement. It is not clear precisely when this was alleged to have happened, but if it happened within six years of the time the complaint was first made, such a claim would not have been made too late under the LA.

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mr K states that the availability of holidays was/is subject to demand. It also looks like he made use of their fractional points to holiday on several occasions – and later upgraded his membership. I accept that he may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr K any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

The PR's response to my provisional findings

In summary, the PR's further comments in response to the provisional decision which are relevant to the complaint about the Section 75 claims said that:

1. I had not properly applied the principles of the Limitation Act 1980, since Section 32(1)(b) provides more time to make the claim where the Supplier has concealed the misrepresentation.
2. Rule CONC 7.3.4R in the Financial Conduct Authority Handbook means that the Lender has a duty to treat customers fairly and consider evidence of fraud or misrepresentation – and this means the Lender should've investigated the claim rather than rejecting it.
3. I had failed to apply *"FOS technical guidance on linked lender liability, which requires that lender make reasonable enquiries rather than summarily dismissing such claims."*

The PR's additional comments do not persuade me to depart from my provisional findings. It says that the Supplier concealed that "*the timeshare's alleged "asset-backed" nature was false*". But, as mentioned above, Mr K's Fractional Club membership was asset-backed in that it was linked to the Allocated Property. That seems to have been made clear at the Time of Sale – both during the presentation he is likely to have been given, and in the documents provided to him at the time. So, I do not think this was "false", as the PR alleges. And I can't see that Section 32 of the Limitation Act provides more time for Mr K to make the claim to the Lender.

As for the PR's second point, CONC 7.3.4R says:

"A firm must treat customers in or approaching arrears or in default with forbearance and due consideration."

I cannot see that this means what the PR says, nor that it is relevant to Mr K's Section 75 claim. While there is a duty to treat customers fairly, I am not persuaded that the Lender unfairly rejected Mr K's Section 75 claims.

Finally, the PR has not specified what technical guidance it is referring to. But I am satisfied I have followed our usual approach when deciding this complaint. As such, for the reasons given in my provisional findings above, I do not uphold this complaint.

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 Mr K to accept or reject my decision before 25 February 2026.

Phillip Lai-Fang
Ombudsman