DRN-5944557

The complaint

Mrs W'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 her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

The timeshare in question was bought jointly by Mr and Mrs W, but as the finance used to make the purchase was in Mrs W's sole name, she is the only eligible complainant here. I will, however, refer to both Mr and Mrs W where it is appropriate to do so.

What happened

Mr and Mrs W were existing members of a timeshare provider (the 'Supplier'). But the product at the centre of this complaint is their membership of a timeshare that I'll call the '26-keys' – which they bought on 27 October 2009 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy the right to occupy a specific holiday accommodation (unit 120) at the Supplier's resort, for two weeks every year from 2010. This cost £23,706.93 but after Mr and Mrs W were given a trade-in value for their existing membership, they ended up paying £18,706.93 (the 'Purchase Agreement').

Mrs W paid for their 26-keys membership by taking finance of £18,706.93 from the Lender in her sole name (the 'Credit Agreement').

Mrs W made a complaint to the Lender in 2019 that the Supplier had misrepresented the 26-keys membership at the Time of Sale, but the Lender rejected this complaint as it had been made more than six years after the event. Mrs W did not accept this outcome and referred this complaint to our Service, and said the decision by the Lender to agree to provide the finance had been irresponsible as it wasn't affordable.

This complaint was assessed by an Investigator at this Service, who didn't think it should be upheld – she thought all aspects of the complaint had been made too late. As a result of the Investigator's opinion, Mrs W withdrew the complaint.

Then Mrs W – using a professional representative (the 'PR') – wrote to the Lender again on 18 March 2024 (the 'Letter of Complaint') to raise a number of different concerns about the purchase of the 26-keys membership and the associated Credit Agreement. These were, in summary:

- The membership of 26-keys had been misrepresented at the Time of Sale, so Mrs W had a claim against the Lender under Section 75 of the CCA; and
- her credit relationship with the Lender had been rendered unfair to her under Section 140A of the CCA because:
    - 26-keys had been sold and/or marketed to her and Mr W as an investment in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations 2010');

- They had been pressured by the Supplier to make the purchase;
- They hadn't been given sufficient information in order to make an informed decision;
- The Supplier was not correctly authorised to broker the credit agreement.
- The decision to lend was irresponsible as it was unaffordable for Mrs W.

The Lender dealt with Mrs W's concerns as a complaint and issued its final response letter on 20 January 2025. It said it would not look again at the lending complaint as this had already been considered by the Financial Ombudsman Service. It said the Supplier had been correctly authorised to broker credit by the Office of Fair Trading (the 'OFT') at the Time of Sale; and the claim that the 26-keys had been sold as an investment was generic and lacked detail. So it rejected Mrs W's complaint on every ground.

This 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.

The Investigator thought that Mrs W's complaint about how the Lender dealt with her claim of misrepresentation under Section 75 of the CCA should not be upheld. She thought the Lender would likely have a defence to the claim under the Limitation Act 1980 (the 'LA') as she was making a claim about events that had occurred more than six years prior.

And as regards Mrs W's complaint of an unfair credit relationship under Section 140A of the CCA, she was not persuaded that there had been a breach of the Timeshare Regulations 2010 in the way the 26-keys had been sold to Mr and Mrs W. She was also not persuaded that they had been put under undue pressure at the Time of Sale, nor did she think that the complaints of unfair terms, a lack of information provision and that the Supplier was not authorised to broker the Credit Agreement should be upheld. She also considered the complaint that the Lender had been irresponsible when it agreed to provide Mrs W with the loan, but she was not persuaded that the lending was unaffordable for Mrs W.

In summary, the Investigator didn't think Mrs W's credit relationship with the Lender had been rendered unfair to her under Section 140A of the CCA

Mrs W, via the PR, disagreed with the Investigator's assessment and asked for an Ombudsman's decision.

While the case was waiting to be allocated to an Ombudsman it was reviewed by a second Investigator who also didn't think it should be upheld, for the same reasons as the first Investigator. But he also said that as the Timeshare Regulations 2010 were not in force at the Time of Sale, the allegation that the 26-keys had been sold as an investment in breach of Regulation 14(3) was misconceived.

In response, the PR maintained that Mrs W's credit relationship with the Lender was unfair as the 26-keys had been sold and/or marketed to her and Mr W as an investment in breach of Regulation 14(3) of the Timeshare Regulations 2010. And it cited *'Shawbrook & BPF v FOS'*[1] to support this assertion. It also said that the LA did not provide the Lender with a defence to Mrs W's claim under Section 75 of the CCA because she would not have been aware of the misrepresentations until she had engaged the PR.

As no informal resolution could be reached the complaint has come to me for a decision.

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[1] *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)

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 ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out 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.

And having done that, I do not think this complaint should be upheld, for broadly the same reasons as previously given by the Investigators.

However, 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.

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

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction.

However, as the Investigators set out, the Limitation Act 1980 (the 'LA') says Mrs W had six years from the date on which the *'cause of action accrued'* to make her claim, after which the Lender has a complete defence.

It is of course for a court to determine whether a respondent can rely on the LA to defend a claim, as the Lender originally did when rejecting Mrs W's claim under Section 75. But I wouldn't normally think it was unfair for a firm to rely on the LA to decline a claim that's been made outside the limitation period.

The date on which the cause of action accrued is, in this case, 27 October 2009 – the Time of Sale. It was then that Mrs W entered into an agreement based, she alleges, on the Supplier's misrepresentation(s). As the loan from the Lender was used to finance the purchase, it was also then that she says she suffered a loss. It follows that Mrs W had six years from the Time of Sale to make a claim for misrepresentation. But she didn't make her claim until 18 March 2024, which is outside the time limits set by the LA.

The PR, in response to the second Investigator's view, has referred to Section 32 of the LA, which postpones the limitation period in cases of fraud, concealment, or mistake. It's also referred to a county court judgment.

Essentially, it says Mr and Mrs W's purchase was 'ill-founded in law' and that Mrs W couldn't have known their purchase was based on misrepresentations or that 'their arrangement was unlawful' until they took legal advice and the judgment was handed down in *Shawbrook & BPF v FOS*, which only happened on 5 May 2023. The PR says the issues concerning the legality of the timeshare arrangement with the Supplier were concealed from Mr and Mrs W at the Time of Sale. But the PR hasn't provided persuasive evidence of fraud, concealment or mistake, such that Section 32 of the LA would postpone the limitation period in this case. I'd like to reiterate that only a court can decide whether this claim was made out of time. My finding is simply that I don't think it was unfair for the Lender to rely on the LA to decline the claim in this case.

So, as Mrs W did not make her misrepresentation claim under Section 75 of the CCA to the Lender within six years of the date the cause of action accrued, I do not think the Lender needs to do anything further in regard to this claim.

Section 140A of the CCA: did the Lender participate in an unfair credit relationship?

I've already explained why I'm not persuaded that a claim under Section 75 of the CCA ought to succeed. But there are aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mrs W and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. What I know about the standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale;
2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation;
3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; and
4. The inherent probabilities of the sale given its circumstances.

I have then considered the impact of these on the fairness of the credit relationship between Mrs W and the Lender.

The Supplier's sales & marketing practices at the Time of Sale

Mrs W's complaint about the Lender being party to an unfair credit relationship was and is made for several reasons, and I have set these out at the start of this decision. However, for the same reasons as set out by the Investigators in this case, none of these strike me as reasons why this complaint should succeed.

Pressure

As regards the allegation that they were put under undue pressure to make the purchase, I acknowledge that Mr and Mrs W may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase 26-keys membership when they simply did not want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. And with all of that being the case, there is insufficient

evidence to demonstrate that Mr and Mrs W made the decision to purchase 26-keys membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

The lending decision

Given the length of time that has passed since the Credit Agreement was incepted, it is unsurprising that the Lender no longer has any records of the checks that were carried out before it agreed to lend. But in any case, even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mrs W was actually unaffordable, before also concluding that she lost out as a result, and then consider whether the credit relationship with the Lender was unfair to her for this reason. I understand that Mrs W's personal circumstances changed somewhat a few years after the purchase, and she has maintained that the lending was never affordable for her on her own when it was first provided. I have also seen that she has provided some pay slips from around the time. But the Investigator explained that this was not enough for her to be satisfied that the lending was unaffordable, and I agree. And as no further evidence in this regard has been provided, I am not persuaded that the lending was unaffordable for Mrs W.

The provision of information

The PR says that Mr and Mrs W were not given sufficient information at the Time of Sale by the Supplier in order to make an informed choice.

It isn't clear what information the PR thinks the Supplier failed to provide at the Time of Sale, or which regulation this alleged failure has breached. Given the date on which the sale occurred, it cannot be said that there has been a breach of Regulation 12 of the Timeshare Regulations 2010 (which was concerned with the provision of information). But I think the sale can be considered under the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUTR'). Under Section 6 of the CPUTR, it is said that a commercial practice is a misleading omission if, amongst other things, the commercial practice omits or hides material information.

As I've said, it is entirely unclear what the PR thinks the Supplier did not tell Mr and Mrs W at the Time of Sale that it ought to have done. But the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

So, while I acknowledge that it is also possible that the Supplier did not give Mr and Mrs W sufficient information, in good time, in order to satisfy the requirements of the CPUTR, even if that was the case, neither Mrs W nor the PR have persuaded me that she and Mr W were deprived of information that would have led them to make a different purchasing decision at the Time of Sale. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why they led to a financial loss.

Was the Supplier correctly authorised to arrange the Credit Agreement

It has been alleged that the Supplier was not correctly authorised, under the authorisation regime in place at the time, to broker the Credit Agreement between Mrs W and the Lender. In its response to the PR, the Lender has set out that at the Time of Sale, the Supplier was correctly licensed by the OFT. The PR has not continued to raise this argument in response to either of the Investigator's views, so it is unclear whether it has accepted that the Supplier

was correctly authorised. But for the avoidance of doubt, I am satisfied that the Supplier was authorised by the OFT to arrange the Credit Agreement at the Time of Sale.

The Supplier's alleged breach of Regulation 14(3) of the Timeshare Regulations 2010

The PR has alleged that Mr and Mrs W's 26-keys membership was sold and/or marketed to them by the Supplier as an Investment, and it says this was in breach of Regulation 14(3) of the Timeshare Regulations 2010. It says that this breach has rendered Mrs W's associated credit relationship with the Lender unfair to her.

But as has been pointed out by the second Investigator, the Timeshare Regulations 2010 were not in force at the Time of Sale, so they cannot have been breached in the way set out by the PR.

Conclusion

In conclusion, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with Mrs W under the Credit Agreement that was unfair to her for the purposes of Section 140A of the CCA. And having considered everything, I don't see any other reason why it would be fair or reasonable to direct the Lender to compensate Mrs W.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 11 May 2026.

Chris Riggs
Ombudsman