

The complaint

Mr L'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 (as amended) (the 'CCA') and (2) deciding against paying a claim under section 75 of the CCA.

Background to the complaint

Mr L and his wife ('Mrs L') purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 22 August 2012 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 747 fractional points at a cost of £9,949 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs L 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.

Mr L paid for their Fractional Club membership by taking finance of £9,949 from the Lender in his own name (the 'Credit Agreement'). That loan was settled on 31 May 2013.¹

(Subsequently they upgraded their membership in 2014 and financed this purchase with a loan from another lender, but that is not the subject of this complaint.)

Mr L – using a professional representative (the 'PR') – wrote to the Lender on 8 March 2018 (the 'First Letter') in connection with a claim against the Supplier. And the PR wrote to the Lender again on 20 June 2019 (the 'Second Letter') 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. The Lender does not appear to have responded to the Second Letter.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, initially upheld the complaint on its merits. But the Lender then responded to dispute that the First Letter had been a complaint or a claim under the CCA. And it argued that the Second Letter had been sent too late under the relevant time limits. The Investigator agreed that the First Letter had not been enough to meet the relevant deadlines, and that the Second Letter had been too late. So he decided that our service did not have jurisdiction to consider the complaint about unfairness under section 140A because it had been brought too late under our time limits. And he found that the section 75 claim had been brought too late under the Limitation Act 1980, and so the Lender had not been obliged to uphold that claim.

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

¹ Evidence of this was shared with Mr L's representative on 5 April 2024.

What I've provisionally 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 agree with what our Investigator said, and for broadly the same reasons.

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.

Jurisdiction: the complaint about unfairness under section 140A of the CCA

Our jurisdiction is set out in rules made by the Financial Conduct Authority. These rules include time limits on bringing a complaint to our Service. These say we can normally only consider a complaint if it was made within six years of the event complained of, or (if later) within three years from the date on which the complainant became aware "*or ought reasonably to have become aware*" that he had cause for complaint. We can still consider a late complaint if it was late as a result of exceptional circumstances.

The First Letter read as follows:

We are instructed on behalf of our above-named clients, in connection with a claim against Club La Costa, for Breach of Contract and/or misrepresentation and/or compensation, arising out their purchase of the certain timeshare products set out below: -

To assist us in this regard, we should be grateful if you could furnish us with copies of the documents detailed in the Form of Authority, signed by our clients, enclosed herewith.

We look forward to receiving copies of the documents requested, at your early convenience.

This does not refer to a claim against the Lender, or express dissatisfaction with the Lender's involvement, or do more than ask for information. So I am satisfied that this letter was neither a claim under the CCA nor a complaint under FCA regulations.

Consequently, the first communication which can be regarded as a claim or a complaint is the Second Letter, which was sent more than six years after the Time of Sale. And I think that Mr L knew, or ought reasonably to have known, that he had cause to complain before the alternative three-year time limit ran out.

I am not aware that Mr L's complaint was delayed as a result of exceptional circumstances. Indeed, he brought another complaint to our Service in 2019 about his 2014 upgrade, in good time. So it's unlikely that there was anything stopping him from complaining about his 2012 purchase and loan, at least between 2014 and 2018.

So I do not think that I have power to consider this part of Mr L's complaint.

Jurisdiction: the complaint about commission

I note that one of Mr L's concerns about the sale of Fractional Club membership relates to an alleged payment of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. Whether that matter is framed in terms of an unfair credit relationship for the purposes of section 140A of the CCA, or as a breach of fiduciary duty under the common law, I think that is out of our Service's jurisdiction for the same reasons I have given above.

The Limitation Act: the claim under section 75 of the CCA

In some circumstances, section 75 gives a consumer the same right to bring a claim against a lender as he has against the supplier of services if there has been a breach of contract or a misrepresentation by the supplier. So when I consider a complaint involving a claim under section 75, I will usually need to consider the supplier's actions. But the complaint is still technically a complaint about the lender – specifically, it's about whether the lender was right or wrong to reject the consumer's claim for compensation.

So under our own time limits, the six years actually started when the Lender refused or failed to refund his money. That only happened recently, which means that I can consider Mr L's complaint about how the Lender dealt with his claim.

However, under the Limitation Act 1980 Mr L had six years from the Time of Sale in which to bring a claim against the Lender under section 75. Since he didn't bring a claim until the Second Letter was sent on his behalf, and that was more than six years later, I don't think I can fairly find that the Lender should have upheld his claim. So I do not uphold that aspect of his complaint.

So my provisional decision is that I do not intend to uphold this complaint.

The PR's response to my provisional decision

The PR did not accept my provisional decision. It said "*all delays in this matter were caused by BPF themselves as they did not respond to our request for paperwork which seems unfair.*"

My findings

I'm afraid that the PR's argument has not changed my mind, because the Lender did not cause any delay between the Time of Sale and the date of the First Letter. Nor is the Lender responsible for the fact that the First Letter was not a complaint within the meaning of the FCA's rules, but only a request for information to assist in the bringing of a claim against a third party.

Perhaps the Lender was slow to respond to the First Letter and to any chasing letters, but I don't need to make a finding about that, because any such delay would not have prevented the PR from writing the Second Letter earlier than it did. If it had enough information to know that Mr L had a claim against the Supplier, then it knew enough to bring a claim against the Lender under sections 75 and 140A of the CCA. So it didn't need to wait until 2019 to do that.

Also, contrary to what I wrote in my provisional decision, the six year deadline for bringing a complaint or claim about unfairness under section 140A of the CCA is the sixth anniversary of the end of the credit relationship, not of the Time of Sale – so Mr L had until 31 May 2019 in which to complain about that. That's more than a year after the First Letter. So even if the

Lender was unresponsive or was slow to respond, there was still plenty of time left in which to complain to the Lender. Unfortunately the Second Letter missed that deadline. So I remain of the view that the complaint about unfairness is not a complaint I can consider.

The deadline for bringing a claim under section 75 is still six years from the Time of Sale, and I don't think the Lender is responsible for that deadline being missed, and so there are no exceptional circumstances which would account for the lateness of the complaint.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 30 January 2026.

Richard Wood
Ombudsman