DRN-5965182

The complaint

Mr M complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance (the "Lender") has declined a claim he brought under Section 75 of the Consumer Credit Act 1974 ("CCA"), and gave him a loan which was arranged by a credit broker who was not authorised to arrange loans.

What happened

I have already issued a decision on the extent of the Financial Ombudsman Service's jurisdiction to consider Mr M's complaint. This final decision deals only with the parts of the complaint I can consider.

Briefly, the background to the complaint is as follows:

- Mr M purchased a timeshare on 28 March 2014 from a timeshare provider (the "Supplier"). The timeshare was a membership in the Supplier's "Fractional Club", which entitled Mr M to 1,000 "points" which could be used annually to book holiday accommodation. This type of timeshare was also asset-backed, meaning it included a share in the future sale proceeds of a specific timeshare apartment named on Mr M's purchase paperwork (the "Allocated Property").

- The purchase cost £11,294, and this was financed by a loan (the "Credit Agreement") from the Lender, which was arranged and paid to the Supplier. This loan was repayable over 120 months at £197.70 per month. Mr M repaid the loan early, in July 2014.

- In March 2022, through a professional representative ("PR"), Mr M complained to the Lender. Many parts of that complaint I have already decided I don't have the jurisdiction to consider, but the parts which I can consider are:

    - That the Supplier had made various misrepresentations in relation to the timeshare, giving Mr M a claim against the Lender under Section 75 of the CCA.

    - That the Supplier had not held the required permissions from the regulator to arrange loans at the Time of Sale, meaning the Credit Agreement had been unenforceable, and/or the individual members of staff who had been involved in the arrangement of the loan had been self-employed and didn't have permissions in their own right.

The Lender rejected the complaint, which was then referred to the Financial Ombudsman Service. One of our Investigator's looked into the complaint, and didn't think it should be upheld. PR on Mr M's behalf, appealed against our Investigator's assessment, so the case was passed to me to decide.

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 published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context 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.

Having done so, I don't think the complaint should be upheld.

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 gives a person who has purchased goods or services with certain kinds of credit, a right to claim against their lender in respect of any breach of contract or misrepresentation on the part of the supplier of those goods or services. This is subject to certain technical conditions being met, which I am satisfied have been met in this case.

As a general rule, I think it's reasonable for creditors to reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 ("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 have been available in court. So, it is relevant to consider whether Mr M's Section 75 claim was time-barred under the LA before PR put the claim to the Lender on his behalf.

A claim under Section 75 is a "like claim". This means it mirrors the claim Mr M could have made 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. A claim for breach of contract against the Supplier would also be subject to a limitation period of six years from the date on which the cause of action accrued.

Any claim against a lender under Section 75 is also *"an action to recover any sum by virtue of any enactment"* under Section 9 of the LA. Such claims also have a time limit of six years from the date the cause of action accrued.

In claims for misrepresentation, the cause of action accrues at the point a loss is incurred. In Mr M's case, that's when he entered the agreement to purchase the timeshare, and the related Credit Agreement, on 28 March 2014. This would be mirrored in the claim against the Lender.

Mr M first notified the Lender of his Section 75 claim in March 2022, more than six years after the cause of action accrued in relation to his claim for misrepresentation. So I don't think it was unfair or unreasonable of the Lender to decline the part of the claim relating to

the Supplier's alleged misrepresentations.

PR has argued that the limitation period can be extended in cases of concealment or fraud, suggesting that the Supplier concealed from Mr M that the Fractional Club membership was an investment, meaning he discovered this fact only later.

There are provisions within the LA to extend limitation periods in such circumstances, however PR's arguments on this point focus on the Section 140A part of the complaint, and this part of the complaint falls outside our jurisdiction for the reasons I explained in my previous decision, and which are unrelated to the provisions of the LA. And I don't think PR's arguments assist the claim in relation to misrepresentation, because the concealment of the product being an investment is inconsistent with PR's allegation that the Supplier falsely *told* Mr M, at the Time of Sale, that the product *was* an investment.

I've also considered Mr M's complaint that the Credit Agreement was arranged by a company or by individuals who were not authorised by the regulator to arrange loans at the time.

Having checked the Financial Ombudsman Service's internal records, I can see the entity which brokered the Credit Agreement did hold a consumer credit licence from the Office of Fair Trading at the relevant time. I've no reason to believe that the licence did not include permission to arrange loans like the one Mr M borrowed. It was the regulatory status of this entity which is relevant to the question of whether or not the Credit Agreement was arranged in the right way, by an authorised credit broker. The employment status of the individual or individuals who worked for that entity, is not relevant. It follows that I see no reason why the Lender should compensate Mr M in respect of this.

My final decision

For the reasons explained above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 December 2025.

Will Culley
Ombudsman