

## The complaint

Mr A complains Clydesdale Financial Services Limited, trading as Barclays Partner Finance ('the Lender'), unfairly declined a claim he made under section 75 of the Consumer Credit Act 1974 ('CCA').

## What happened

Mr A purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') in April 2013 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 747 fractional points at a cost of £10,399 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr A 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 his membership term ends.

Mr A paid for his Fractional Club membership by taking finance of £10,399 from the Lender (the 'Credit Agreement').

Mr A – using a professional representative (the 'PR') – wrote to the Lender in July 2023 (the 'Letter of Complaint') to raise a number of different concerns. Specifically, the complaint letter alleged:

- The Supplier told Mr A would make a profit when the Allocated Property is sold.
- Mr A was told he could ask the Supplier to re-sell his membership at any point in time, which was untrue and a gross misrepresentation.

The Lender responded to Mr A's complaint in January 2024. It said it understood Mr A had raised a complaint under sections 75<sup>1</sup> and 140A of the CCA. It went on to say that Mr A had waited too long to make a complaint, as he had repaid the loan more than six years ago in September 2013, and that it was time barred under the Limitation Act ('LA').

Mr A's PR referred the complaint to our service. One of our investigators considered the complaint. They didn't think it was unfair for the Lender to rely on the LA to decline a claim under section 75 of the CCA. And they didn't think this service could consider a complaint under section 140A of the CCA because it had been made more than six years after the loan was repaid.

Mr A's PR has asked for a final decision from an ombudsman. This decision will deal solely with Mr A's complaint that the Lender unfairly declined the claim he made under section 75 of the CCA. I will consider the rest of Mr A's complaint in a separate decision.

## What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

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<sup>1</sup> Mr A hadn't raised a claim under section 75 with the Lender, only a dispute under section 140A of the CCA. But the Lender, as did our Investigator, took Mr A's allegations of misrepresentation as a claim under section 75 of the CCA and responded accordingly.

reasonable in the circumstances of this complaint.

Section 75(1) of the CCA protects consumers who buy goods and services on credit. It says, in certain circumstances, that the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier.

However, the Lender says it's too late for Mr A to make a claim for misrepresentation. It's specifically referred to the LA, which essentially says Mr A had six years from the date on which the cause of action accrued' to make his claim, after which The Lender has a complete defence to the claim.

I wouldn't normally think it was unfair for a respondent firm to rely on the LA to decline a claim that's been made outside the limitation period, and I don't think it's unfair in this instance.

The date on which the cause of action accrued is, in this case, the date of sale. It was then that Mr A entered into an agreement based, he says, on the Supplier's misrepresentations. As the loan from The Lender was used to finance the purchase, it was also then that they suffered a loss. It follows that Mr A had six years from the date of sale to make a claim for misrepresentation. But he didn't make his claim until July 2023, which is outside the time limits set by the LA.

Mr A's PR says section 14A of the LA gives Mr A more time to make his claim. I disagree. Section 14A provides claimants with a 'special time limit for negligence actions where the facts relevant to [the] cause of action are not known at the date of accrual'. However, in *Thomas v Taylor Wimpey Developments* [2019] EWHC 1134 (TCC), the court confirmed that claims under section 2(1) of the Misrepresentation Act 1967 are not claims of negligence and section 14A of the LA doesn't apply to them. And, based on the PR's brief submissions, I don't see how section 14A could otherwise extend the time limit for Mr A.

In addition, the PR says section 32(1) of the LA also gives Mr A more time to make his claim. Again, I disagree. Section 32(1) of the LA has the potential to postpone the relevant limitation period in cases of fraud, concealment, or mistake. I have thought about that here. But in this case the PR has simply referenced section 32(1), but it hasn't explained what acts The Lender carried out, that would make it a relevant consideration that might extend time. So, I find it very difficult to see taking into account the brief submissions provided by the PR in this case, how section 32(1) could extend the time limit for Mr A.

Also, I have on file an email exchange between the Supplier and Mr A dated February 2017 in which it acknowledges Mr A's request to the Supplier to sell his membership, and it responded to explain that it didn't operate a 're-sale' programme. In May 2017, the Supplier responded to Mr A's complaint he was led to believe he could sell his membership during the 2013 sales presentation. So, even if it could be said that section 32(1) is likely to have postponed the limitation period until Mr A first discovered that he was unable to sell his membership in the way he had been led to believe he could (and I make no such finding that it would), I'm not persuaded that would make a difference here.

As for the suggestion from the PR that MR would only have become aware of cause for complaint after the judgment in *Shawbrook & BPF v FOS*, I can't see how this can be true, as Mr A had previously complained to the supplier in 2017. So, the PR is clearly wrong to suggest that the limitation period only started from the point the judgment was handed down.

## **My final decision**

For the reasons given, I don't think it was unfair for Clydesdale Financial Services Limited,

trading as Barclays Partner Finance, to decline Mr A's claim under section 75 of the CCA.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 23 December 2025.

Stefan Riedel

**Ombudsman**