

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 them under section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA'), (2) deciding against paying a claim under section 75 of the CCA, and (3) lending to him irresponsibly by failing to ensure that he could afford the loan.

Background

In 2004 Mr K and his wife purchased trial membership of a timeshare ('the timeshare') from a timeshare provider (the 'Supplier'). They subsequently upgraded to full membership in 2005, and bought additional points in 2008. Those purchases are not the subject of any complaint.

On 16 May 2010, Mr and Mrs K bought 700 additional points for £11,139. They financed this purchase with a loan from the Lender in Mr K's sole name ('the First Credit Agreement'). For that reason, he is the only eligible complainant under our rules. That loan was settled on 11 June 2012.

On 26 or 28 September 2010, Mr and Mrs K bought an additional 300 points for £6,056. They say that this purchase was financed by another loan ('the Second Credit Agreement'), but it is not clear who with. The Lender says that it has no record of any such loan, and Mr and Mrs K do not identify the lender in their joint witness statement. It appears that this loan is now no longer part of this complaint, but if I have misunderstood then I invite them to tell me (and to provide whatever evidence they may have about this loan agreement).

On 4 October 2011, Mr and Mrs K bought a fractional timeshare, buying 2,988 fractional points. The cash price was £40,131, but after trading in all of their 2,501 existing points, they ended up paying £10,119 for their fractional points. They financed this purchase with a loan from the Lender, this time in Mrs K's sole name ('the Third Credit Agreement'). Accordingly, her complaint about that purchase has been dealt with as a separate case.

As this complaint is only concerned with the purchase on 16 May 2010, that is referred to as the 'Time of Sale' for the purposes of my decision.

Mr K – using a professional representative (the 'PR') – wrote to the Lender on 11 November 2019 (the 'Letter of Complaint') 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 did not uphold his complaint.

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 on the ground that it had been brought too late. He said that some of the complaint was out of our jurisdiction under the FCA's time limits, and the rest of it was time-barred under the Limitation Act 1980.

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 my provisional findings to the parties on 18 September 2025. In my provisional decision, I said the following:

My provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I am required to take into account relevant law. And having done that, I do not currently think this 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.

Time limits

I will begin with my jurisdiction to consider this complaint.

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.

Mr K complained to the Lender in November 2019, nine years after the Time of Sale. If he believed that the Lender had not asked him about his income and expenditure or had not taken steps to ensure that he could afford the loans, then he was aware of that at the time, or ought to have been, so the three-year rule does not assist him. I have not been told about any exceptional circumstances which caused the delay in complaining. So I think that his complaint about irresponsible lending has been brought too late under the FCA's rules, and that I therefore cannot consider it.

For the purposes of a claim under section 140A of the CCA, the time under the six-year time limit begins to run when the credit relationship between the debtor and the creditor ends. In this instance, that was when the loan was settled in 2012, so Mr K needed to complain by 2018. Again, he knew he had grounds to complain about unfairness at the Time of Sale, because one of his complaints was about high-pressure sale tactics. So – with the possible exception of the PR's complaint about undisclosed commission having been paid by the Supplier to the Lender, which I will refer to later – I'm satisfied that I cannot consider the complaint about an unfair credit relationship existing between Mr K and the Lender.

In its response to the Investigator's opinion, the PR appeared to say that the FCA's time limits do not apply to a complaint concerning section 140A. But they most certainly do.

The position is different when it comes to a claim under section 75. For the purposes of my jurisdiction, time runs not from when the Credit Agreement was entered into or

from the alleged misrepresentations, but from when the Lender rejected Mr K's claim under that section. So I certainly have jurisdiction to consider his complaint about that.

For a claim under section 75 about misrepresentation, time under the Limitation Act runs from the Time of Sale, so I agree with the Lender that the section 75 claim was brought out of time, and that this is a complete defence to that claim.

For a claim under section 75 about breach of contract, time under the Limitation Act runs from the date of the alleged breach. Some of the breaches alleged by Mr K may have been in time (i.e. less than six years before he complained), and so I will consider them next.

Section 75 of the CCA: the Supplier's breach of contract

Mr K says that he could not holiday where and when he wanted to. That was framed, in the Letter of Complaint, as part of his complaint about the fairness or otherwise of his credit relationship with the Lender under section 140A of the CCA. However, on my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

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 his fractional points to holiday on a number of occasions. 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 Agreements.

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.

[...]

Conclusion

In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant section 75 claim, and if I put the issue of commission to one side for the time being, I am not persuaded that the Lender was party to a credit relationship with Mr K under the Credit Agreement that was unfair to him for the purposes of section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate him.

My addendum provisional decision

At the time of my provisional decision I deferred my conclusions on the matter of commission disclosure in order to review that issue further. I've since written to the parties setting out my thoughts on why I wasn't persuaded to uphold this aspect of the complaint.

This was because the Lender had supplied information demonstrating that no commission was paid in relation to the arrangements involving Mr K. With that being the case, I wasn't

persuaded this position could have led to an inequality of knowledge capable of rendering the credit relationship unfair to Mr K such that the Lender needed to take any action in redress.

I didn't find any of the other arguments put forward demonstrated that the credit agreement between Mr K and the Lender was unfair to his under section 140A of the CCA. Absent any other reason why it would be fair or reasonable to direct the Lender to compensate Mr K, I said I didn't propose to uphold the complaint.

Responses to my provisional findings

The Lender accepted my provisional decision. The PR didn't accept the proposed outcome. It made further submissions in support of Mr K's position. Having received and reviewed these, I'm now proceeding with my final decision.

In doing so, I'm conscious that the PR has made a series of assertions surrounding the provision of information relating to commission arrangements. These include, among other things, expressing doubt that the Lender has provided key information, requesting that the information we have received be shared with it in full, and asking that we do not proceed with a decision before this is done and it has had an opportunity to make further submissions.

The PR's requests have been addressed by us under separate correspondence. For reasons I will explain in the course of this decision, I've concluded that it's appropriate for me to proceed with my determination.

The legal and regulatory context

The legal and regulatory context that I think is relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in previous correspondence with the parties. So there's no need for me to set this out again in detail here. I simply remind the parties that our rules¹ say that in considering what is fair and reasonable in all the circumstances of the complaint, I will 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.

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.

After considering the case afresh and having regard for what's been said in response to my provisional decision and in my subsequent correspondence, I find it offers no persuasive reason to depart from the conclusions I've previously set out. I'll explain why.

Time limits

The PR argued that this complaint was not out of time under either the Limitation Act or the FCA's rules. In connection with section 140A of the CCA, it appeared to argue that the Limitation Act does not even apply. But it most certainly does, as set out very clearly in the Supreme Court's judgment in *Smith and another v Royal Bank of Scotland*.² But I will

¹ Financial Conduct Authority ("FCA") Handbook – DISP 3.6.4R ("R" denotes a rule).

² [2023] UKSC 34.

consider the arguments the PR made about how the Limitation Act applies to a claim under section 75 of the CCA as also being relevant to a claim under section 140A.

The PR made essentially the same argument in relation to both the Limitation Act and the FCA's rules: that Mr K had been unaware that he had cause to complain until long after the Times of Sale, and within three years of the Letter of Complaint. I have already described the FCA's three year time limit, which runs from when a complainant knew or should have known that he had cause to complain. And section 32 of the Limitation Act provides for a limitation period to begin later than it otherwise would if relevant facts have been concealed or there has been fraud; instead it runs from when the concealed fact or fraud was (or should have been) discovered.

The PR also argued that Mr K being unaware of key facts amounted to exceptional circumstances under the FCA's rules. But I don't think that can be how the FCA intended that rule to operate, because that scenario is already provided for by the three year rule.

I accept that Mr K was unaware of the undisclosed commission issue at the Times of Sale, and no doubt for some time afterwards. But he certainly did know that he had cause to complain about other issues. For example, one of the reasons he alleges he has been treated unfairly is because of the Supplier's high pressure sales tactics during a five hour sales pitch, and he must have known about that at the time. And one of the alleged misrepresentations was that the Supplier's holiday resorts were exclusive to members of the Fractional Club, but that Mr K soon discovered that non-members could also book holidays at the resorts and more cheaply. He knew about that within six years of the Time of Sale.

I don't accept that every time a new issue to complain about is discovered it starts a new statutory limitation period, or starts a new three-year period under the FCA's rules. I think that once a person knows they have cause to complain about something, or cause to bring a claim under section 75 or 140A of the CCA, and chooses not to complain, they can't subsequently complain about another issue arising out of the sale more than six years after the Time of Sale and claim that they could not have complained earlier. So I remain of the view that Mr K has left it too late to complain about an unfair credit relationship, misrepresentation, or irresponsible lending.

(For reasons I explained in my original decision, I think that breaches of contract are an exception because each breach is a new cause of action. So I have not changed my mind that I can consider those allegations on their merits.)

Merits

The PR originally raised various points of complaint, such as those giving rise to Mr K's section 75 claim, which I addressed in my provisional decision. In its response, it hasn't made any further comments in relation to most of its original points, or said anything that leads me to think it disagrees with my provisional conclusions in relation to those points. Instead, it focused mainly on the issue of whether the credit relationship between Mr K and the Lender was unfair *per* section 140A of the CCA (and the related jurisdictional question).

I've seen no reason to change my mind about the allegations of breach of contract. So I remain of the view that the Lender did not have to uphold Mr K's claim under section 75 of the CCA.

Commission: The alternative grounds of complaint

In my previous correspondence I mentioned that some of the grounds for complaint about the fairness or otherwise of the credit relationship could also constitute separate and freestanding complaints. I'll reiterate my findings here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr K (that is, secretly). The second relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

For the reasons I set out previously, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr K a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to him. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint. For the reasons I have also previously set out, I think he would still have taken out the loan to fund his purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Conclusion

After careful reconsideration of the facts and circumstances of this complaint, I adopt my provisional conclusions as part of my final decision. For the reasons I've given above and in my earlier correspondence I've mentioned, I don't think the Lender acted unfairly or unreasonably when it dealt with Mr K's section 75 claim. And I'm not persuaded that the Lender was party to a credit relationship with Mr K that was unfair to him for the purposes of section 140A of the CCA. Having taken everything into account, I see no other reason why it would be fair or reasonable for me to direct the Lender to compensate Mr K.

My final decision

For the reasons set out above, my final decision is that I don't 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 12 March 2026.

Richard Wood

Ombudsman