

The complaint

Mrs O 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.

What happened

Mrs O purchased memberships of a timeshare from a timeshare provider (the 'Supplier') – purchasing the following memberships of traditional timeshares (that is both of these purchases were non-fractional memberships on the dates below:

- 5 July 2009 she bought a membership for £18502 but after trading in her previous timeshare (valued at £6000) she paid £12502 for it ('Purchase Agreement 1')
- 1 June 2010 she paid £5910 – having traded in her first purchase ('Purchase Agreement 2')

(which, when appropriate, I'll simply refer to as the "Purchase Agreements")

Neither of these purchases were 'fractional' or asset backed according to the purchase documents supplied.

Mrs O paid for her memberships by taking the following amounts of finance of from the Lender:

- £12502 on 5 July 2009 ('Credit Agreement 1')
- £20,498 on 1 June 2010 ('Credit Agreement 2') consolidating most of the previous credit agreement (but not all of it).

(which, when appropriate, I'll simply refer to as the "Credit Agreements")

Mrs O – using a professional representative (the 'PR') – wrote to the Lender with a letter dated 16 May 2018 (the 'Letter of Complaint') supplied to this service in April 2021 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 dealt with Mrs O's concerns as a complaint and issued its final response letter on 29 April 2021, rejecting it on every ground. The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, applied time limits to some of the complaint and rejected the rest of the complaint on its merits.

Mrs O disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

On the 14 November I issued a provisional decision which stated that the complaint about the outcome of the S140A claim regarding the 2009 sale was out of jurisdiction and that I thought the rest of the complaint was within jurisdiction but should not be upheld. Only the

Lender responded within the timeframe set out for responses. The Lender responded agreeing and noting that it had no evidence of any commission being paid on either sale.

Once the deadline for responses timed out, I arranged for the PR to be informed of this and asked it to provide any evidence it had showing that there was commission or I'd proceed on the basis that there had been no commission paid.

I then issued a decision stating that the complaint about the outcome of the S140A claim regarding the 2009 purchase was outside of my jurisdiction.

The PR has since responded with its comments on the merits of the complaint in response to the information provided regarding no evidence of commission being paid (albeit outside of the timeframe set).

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 (including considering the PR's latest comments), it is my decision that this complaint should not be upheld. I shall address the responses from the parties to my provisional decision under the heading 'further arguments', but before which I shall set out my thinking as set out in my provisional decision as I see no persuasive reason to depart from it (in italics).

But before I do, I shall repeat what I said in the background to my provisional decision. *"Neither of these purchases were 'fractional' or asset backed according to the purchase documents supplied."* So as there is no evidence from the time that this is incorrect, I do not intend to comment on the PR's repeated and numerous arguments premised on the erroneous belief that these were fractional or asset backed purchases. Such products simply were not available when Mrs O made these purchases as this supplier simply hadn't started selling them yet.

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.

The 2009 sale and the 2010 sale - The S75 claims

Within the letter of claim the PR made a claim on Mrs O's behalf under S75 of the CCA. These include allegations of misrepresentation during the sales process and submissions in support of those allegations.

This membership was purchased on 5 July 2009 and the Lender in its final response dated 29 April 2021 applies time limits to this case for why it wasn't doing anything more.

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. In short, a claim against The Lender under section 75 essentially mirrors the claim Mrs O could make against the Supplier.

With regard to the 2009 sale under section 9 of the Limitation Act 1980, Mrs O had to make any claim within six years of when such misrepresentations are said to have happened (2009) or when alleged breaches of contract occurred because those are the points from which she would have lost out. And as this particular membership ended in 2010 (when it was upgraded) and they didn't make this S75 claim until May 2018 (at the earliest) it is clear to me that the Lender could rely on the Limitation Act as a complete defence from any such claims. Accordingly I'm not persuaded Mrs O has lost out due to the Lender applying the Limitation Act in this case.

I should add here that for the same reasons I think the Lender has a complete defence to the S75 claim regarding the 2010 sale. Namely the claim wasn't brought within six years of the alleged misrepresentations. And I've seen no alleged breaches where specific dates of these breaches have been given which would be 'in time'. So I think the Lender has a complete defence to any such S75 claims.

The 2009 and 2010 sales - Lending

The PR says that the right checks weren't carried out before the Lender lent to Mrs O. I haven't seen anything to persuade me that was the case in this complaint given its circumstances at either point of lending. But 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 O was actually unaffordable at the time before also concluding that they lost out as a result. And as I've explained I'm not persuaded that I've seen enough to conclude that Mrs O has lost out at either the point of borrowing in 2009 or 2010.

The 2010 sale - Section 140A of the CCA: did the Lender participate in one or more unfair credit relationships?

I've already explained why I'm not persuaded that membership could be actionably misrepresented by the Supplier at the Times of Sale. But there are other 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 O 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. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Times of Sale along with any relevant training material;*
- 2. The provision of information by the Supplier at the Times of Sale, including the contractual documentation and disclaimers made by the Supplier;*
- 3. Evidence provided by both parties on what was likely to have been said and/or done at the Times of Sale;*

4. *The inherent probabilities of the sale given its circumstances; and, when relevant*
5. *Any existing unfairness from a related credit agreement.*

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

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

Mrs O say that they could not holiday where and when they wanted to. That was framed, in the Letter of Complaint, as part of her complaint about the fairness or otherwise of her credit relationships 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 Mrs O states that the availability of holidays was/is subject to demand. It also looks like they made use of her points to holiday on a number of occasions. I accept that they 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 Agreement. So, from the evidence I have seen, I do not think these arguments illustrate that the credit relationship had become unfair.

The PR alleges that the Supplier misled Mrs O and carried on unfair commercial practices under Regulations 5 and 6 of the CPUT Regulations. However, as Regulations 5 and 6 state, commercial practices only amount to misleading actions or omissions if, in addition to satisfying one or more of the specific matters set out in those provisions, they cause or are likely to cause the average consumer to take a transactional decision they would not have taken otherwise. And as I haven't seen enough evidence to persuade me that, if there were any such actions or omissions at the Times of Sale (which I make no formal finding on), they led Mrs O to make the purchasing decisions they did, I'm not persuaded that anything done or nor done by the Supplier amounted to an unfair commercial practice for the purposes of those provisions.

The PR also alleges that the Supplier acted unfairly under Regulation 7 Schedule 1 of the CPUT Regulations. But given the limited evidence in this complaint, I am not persuaded that the Supplier did. In addition, the PR also says that there was one or more unfair contract terms in the Purchase Agreement. However, as things currently stand, this doesn't strike me as a reason why this complaint should succeed. I can't see that any such terms were operated unfairly against Mrs O in practice, nor that any such terms led her to behave in a certain way to her detriment. And with that being the case, I'm not persuaded that any of the terms governing the membership are likely to have led to an unfairness that warrants a remedy. Overall, therefore, I don't think that Mrs O credit relationship with the Lender was rendered unfair to her under Section 140A for any of the reasons above.

I note that the PR hasn't raised a particular argument which is commonly raised in such complaints regarding timeshares and that is that the credit relationship with the Lender was unfair to them because the membership was marketed and sold to her as an investment in breach of prohibition against selling timeshares in that way. For the sake of completeness and to avoid undue delay I'll deal with that argument here. I think on balance that this membership wasn't sold in contravention of that regulation (14.3). I say this because the membership had no interest in an allocated property. And I say that for three reasons, firstly the documentation from the purchase shows no allocated property nominated on it, secondly Mrs O doesn't raise the issue of investment in property in her statement and thirdly this service is aware of when fractional timeshare memberships were sold and this sale pre-

dates that time significantly. So on balance I don't think it was sold in contravention of that regulation and it thus follows that I don't think this credit relationship was rendered unfair for this reason.

The provision of information by the Supplier at the Times of Sale

The PR says that Mrs O were not given sufficient information at the Times of Sale by the Supplier about the ongoing costs of membership. The PR also says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms. As I've already indicated, 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 her impact on the complainant.

I acknowledge that it is also possible that the Supplier did not give Mrs O sufficient information, in good time, on the various charges she could have been subject to as members. But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mrs O nor the PR have persuaded me that they would not have pressed ahead with her purchases had the finer details of the ongoing costs been disclosed by the Supplier, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

Further arguments

As I've said the PR in response to my provisional decision has made a number of arguments about alleged failings in regard to the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010. I'm not going to respond to these because:

- 1) Neither of these purchases had a share allocated property (as shown by the paperwork from the time) and as explained in my provisional decision.
- 2) Both sales predated these regulations coming into force so even if these purchases had an allocated property element (which they didn't) there wasn't any such regulation in force to be in contravention of.

The PR has also supplied training materials for different timeshare products to those sold here and which were sold some years later than these purchases. As these training materials refer to timeshare products which are substantially different to those sold in this case (i.e. that had allocated properties whereas Mrs O's did not) then I see little nothing to be gained by commenting on those submissions which aren't relevant to the facts here.

The PR has also made submissions regarding the alleged unfairness caused by the alleged payment of commissions here despite this service telling the PR that there was no evidence of commission being paid in either sale to Mrs O and specifically asking the PR if it had any such evidence. As the PR has provided no evidence of commission being paid in this case despite being asked to do so, and bearing in mind the Lender says there's no evidence of commission being paid in relation to these sales I'm not persuaded that commission was paid and therefore I'm not persuaded it could have caused any unfairness between Mrs O and the Lender whether as a complaint regarding the unfairness of the credit relationship or as a stand-alone complaint.

All in all the submissions by the PR in response to my provisional decision are largely irrelevant to the facts of Mrs O's specific case and wholly unpersuasive to my mind.

Conclusion

Accordingly I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with Mrs O under the Credit Agreement that was unfair to her 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 her.

My final decision

It is my decision that this complaint about Clydesdale Financial Services Limited trading as Barclays Partner Finance is not upheld. It has nothing further to do with this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 1 January 2026.

Rod Glyn-Thomas
Ombudsman