

The complaint

Mrs M'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 her 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 her irresponsibly by failing to check that she could afford the loan.

Background to the complaint

Mrs M and her husband purchased membership of a timeshare from a timeshare provider (the 'Supplier') on 13 October 2011 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 750 points at a cost of £10,587 (the 'Purchase Agreement').

Mrs M paid for their timeshare membership by taking finance of £10,587 from the Lender (the 'Credit Agreement') in her sole name. That loan was settled on 15 December 2011.

Mrs M – using a professional representative (the 'PR') – wrote to the Lender on 22 January 2018 (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 substantively respond.

The complaint was later 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. She said that our service did not have jurisdiction to consider the section 140A complaint, under our time limits. She said we could consider the complaint about the section 75 claim, but as it had been time-barred under the Limitation Act 1980, the Lender had not been obliged to uphold it.

Mrs M disagreed with the Investigator's assessment and asked for an ombudsman's decision – which is why it was passed to me. I wrote a provisional decision which read as follows.

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 do not currently think this complaint should be upheld, for broadly the same reasons as the Investigator gave.

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.

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.

As I’ve said, the Time of Sale was 13 October 2011, so the deadline for complaining about irresponsible lending was 13 October 2017. It is not in dispute that this deadline was missed. And I don’t think the three-year time limit assists Mrs L. If she believed that the Lender had not asked her about her income and expenditure, or that it had not taken steps to ensure that she could afford the loan, then she was aware of that at the Time of Sale.

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 on 15 December 2011 (according to an account statement supplied by the PR). The deadline was therefore 15 December 2017. So I’m satisfied that Mrs L’s complaint about unfairness under section 140A was also not brought in time. Again, the three-year time limit does not assist her here, because she would have known at the Time of Sale about some of the matters she says made the relationship unfair (for example, nothing being explained to her properly by the Supplier’s sales representative), and if it was difficult to book holidays then she knew that within the first three years from December 2011.

I have not been told about any exceptional circumstances which caused the delay in complaining. So I think that her complaints about irresponsible lending and about an unfair relationship with the Lender have been brought too late under the FCA’s rules, and that I therefore cannot consider them.

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 misrepresentation, but from when the Lender failed to uphold Mrs L’s claim under that section, which was in 2022. So I certainly have jurisdiction to consider her complaint about that.

However, in a claim for misrepresentation, time under the Limitation Act runs from the Time of Sale. So I agree with the Lender that this claim was brought out of time, and that this gives the Lender a complete defence to her claim.

Turning to the claim for alleged breaches of contract under section 75, that is in jurisdiction for the same reason I gave above. For the purposes of the Limitation Act, time begins to run from each alleged breach, not from the Time of Sale, and so it’s likely that this part of Mrs L’s section 75 claim is *not* time-barred. So I will consider that matter on its merits.

Mrs M says that she could not holiday where and when she wanted to. That was framed, in the Letter of Complaint, as part of her complaint about the fairness or otherwise of her 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 Mrs M states that the availability of holidays was/is subject to demand. It also looks like she made use of her points to holiday on a number of occasions. I

accept that she 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 the Lender is liable to pay Mrs M 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.

My decision is that I do not currently intend to uphold this complaint.

The PR's response to my provisional decision

The PR did not accept my provisional findings. It argued that because the Supplier and the Lender had concealed certain information from Mrs M until it was too late for her to complain, the limitation period is extended under section 32 of the Limitation Act, and the three-year jurisdiction deadline should apply instead of the six-year deadline. Alternatively, this was an exceptional circumstance which explained why the complaint had been brought late. Specifically, the non-disclosure of commission amounted to deliberate concealment. Other facts concealed were said to be the right to exit the contract, and the true market value of the fractional timeshare properties Mr and Mrs M had gone on to purchase in 2012 and 2013.

The PR also said that Mrs M's deteriorating health and diminished her ability to investigate matters and find out about the grounds for complaint, and that this was therefore an exceptional circumstance.

Other exceptional circumstances were the complexity of the product sold; and "*prolonged exploitation through repeated sales over a long period*" from 2004 to 2013.

The PR also argued that the Purchase Agreement and the Credit Agreement should not be treated as an isolated event, but as part of a continuing course of conduct over the years. Since a subsequent sale in 2012 had been the subject of another complaint which was upheld (against a different lender), the complaint about the 2011 sale should also be deemed to have been brought in time.

My findings

When considering our service's jurisdiction to deal with this complaint, I am unable to treat it as part of a series of connected sales; I have to decide whether Mrs M's complaint about the October 2011 Credit Agreement, specifically, is in jurisdiction or not. I can't decide that it is in jurisdiction just because her other complaint about a later loan was in, or because her husband's similar complaint was in. Furthermore, the alleged concealing of facts pertaining to the 2012 and 2013 timeshares is not relevant to either the jurisdiction time limit, or the relevant limitation periods, concerning the sale of the 2011 timeshare and the loan which financed it.

I remain of the view that exceptional circumstances do not assist Mrs M in this complaint, because she knew she had cause to complain about various issues within six years of the Time of Sale (as I explained in my provisional decision). Any concealment of some other matters would not have affected her ability to complain about the things she already knew about, so they do not amount to a reason why the complaint was brought out of time. Similarly, her health did not prevent her from knowing that she had cause to complain about those matters.

I think the same thing about the limitation period. One of the alleged misrepresentations was that the Supplier had lied about the quality of the holiday accommodation Mr and Mrs M would be able to book. She certainly knew what standard of accommodation she was getting within six years of the Time of Sale, so I am unable to agree that she was prevented from bringing a section 75 claim about misrepresentation within that time due to facts being concealed from her. So I don't think that section 32 of the Limitation Act assists her here.

I also don't think that the timeshare which Mr and Mrs M bought in 2011 (which was not a fractional timeshare) was such a complex product that they could not have understood that they could complain about the standard of holiday accommodation, or about the management fees, for example. So I do not regard that as an exceptional circumstance either.

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 Mrs M to accept or reject my decision before 4 February 2026. But this final decision brings this complaint to a close.

Richard Wood
Ombudsman