

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 him under section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying claims under section 75 of the CCA.

Background to the complaint

Mr K and his wife purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 29 January 2012 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,494 fractional points at a cost of £25,693 (the 'Purchase Agreement'). But after trading in their trial membership, they ended up paying £21,698 for the fractional points.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs K 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 their membership term ends.

Mr K paid for their Fractional Club membership by taking finance of £21,698 from the Lender (the 'Credit Agreement'). The Lender paid the Supplier a commission payment of £1,462.45 (which is 6.74% of the sum borrowed). That credit agreement was in Mr K's sole name, which means that under rules made by the FCA he is the only person eligible to complain about it. (A later purchase in 2013, financed by a loan in his wife's name, is the subject of a separate complaint.)

Mr K settled his loan on 16 May 2012.

Mr K – using a professional representative (the 'PR') – wrote to the Lender 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 Mr K's concerns as a complaint and issued its final response letter on 14 July 2021, rejecting it on every ground. In particular, it argued that Mr K's section 75 claim had been brought too late under the Limitation Act 1980.

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 its merits. He agreed that the section 75 claim had been brought too late.

Mr K 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.

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 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.

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 ('FCA'). 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.

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 May 2012.

I have seen a copy of a complaint letter written by the PR to the Lender on Mr K's behalf and dated 25 May 2017. Assuming that the letter was sent on or around that date, it would have been sent before the six-year deadline. But under the FCA's rules, that isn't enough to stop the clock. It is also necessary for Mr K to have "*a written acknowledgement or some other record of the complaint having been received*".¹

I asked the PR if it had any evidence of the Lender having received the 2017 letter. It has not yet provided me with anything, but I will consider anything it sends me in response to this provisional decision.

I also asked the Lender if it had received the 2017 letter. It answered that it had not, and that it had no record of having received any complaint earlier than 29 March 2019. It provided its internal account notes as evidence of this. A complaint was logged on 5 April 2019, and there is no earlier record of a complaint.

¹ See rule DISP 2.8.2(2).

Accordingly, I am currently not satisfied that Mr K's complaint about an unfair credit relationship with the Lender under section 140A has been brought in time under the FCA rules. This means I am unable to consider it.

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 or breach of contract, but from when the Lender rejected Mr K's claim under that section, which was on 14 July 2021. He complained to our service about that in good time, so I certainly have jurisdiction to consider his complaint about that.

However, for a claim for misrepresentation under section 75, time under the Limitation Act runs from the Time of Sale – 29 January 2012 – and six years later was 29 January 2018. So I agree with the Lender that Mr K's section 75 claim for misrepresentation was brought out of time, and that this is a complete defence to his 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 claim is not time-barred, since some of the alleged breaches will have occurred within the six years preceding 29 March 2019 – i.e. since 29 March 2013. So I will consider those next.

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

Under section 75, if I find that the Supplier is liable for having breached the Purchase Agreement, then the Lender is also liable.

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. 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 Agreement.

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 when it declined his section 75 claim.

[...]

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 do not think I have power to consider whether 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.

In my addendum decision, I said that I had considered the decision of the Supreme Court in *Johnson v FirstRand Bank Ltd, and Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33, which is the leading authority about undisclosed commission payments. But nothing in that judgement led me to think that I could consider the section 140A complaint after all. Nor did that judgement make me think that I could uphold the issue of undisclosed commission on an alternative ground, namely breach of a fiduciary duty to Mr K. The Supreme Court made it clear that no such duty was owed by the Supplier to Mr K.

Responses to my provisional decisions

The Lender accepted my main provisional decision. The PR did not. However, the PR did not challenge my decision about my jurisdiction to consider the section 140A complaint, or my decision about how the Limitation Act affected the section 75 complaint. It confined itself to addressing the merits of Mr K's complaint. Since the merits are limited to the allegation of breach of contract by the Supplier, and the Lender's liability for that under section 75, I will only deal with that in my final decision.

Neither party had anything to say about my addendum provisional decision. But the PR 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.

My findings

I've concluded that it's appropriate for me to proceed with my determination, the PR's submissions notwithstanding.

As the PR will be aware, under DISP 3.5.9R I may, where I consider it appropriate, accept information in confidence (so that only an edited version, summary or description is disclosed to the other party). I'm satisfied that agreements between the Lender and the Supplier are commercially sensitive and that the summary information on commission arrangements we've already shared with the PR is appropriate in this case.

Furthermore, nothing in the evidence so provided leads me to think that the section 140A complaint falls within my jurisdiction, so I cannot see how the PR would be disadvantaged in the bringing of Mr K's complaint by not disclosing it.

Turning to the substantive jurisdiction question, the PR has not provided evidence that the 2017 complaint letter was ever received by the Lender. And it has not argued that the complaint was delayed to 2019 due to any exceptional circumstances. But I will still consider whether exceptional circumstances arise from the non-receipt of the 2017 letter.

I would expect the PR to know that the deadline for bringing a claim under section 140A, or a complaint based on that section, would be six years from the end of the credit relationship; that is, 16 May 2018. So, having sent the Lender a letter in May 2017, and not receiving any reply or acknowledgement for a year, I would expect the Lender to have sent another letter, or an email, or made a phone call, before the deadline; they had plenty of time. But they

missed the deadline by ten months. I cannot see that there is any exceptional cause of that delay. So I remain of the view that the section 140A matter – including commission – has been brought out of time, and that I cannot consider it.

I think much the same thing about the limitation period for the section 75 claim about misrepresentation. The Lender was entitled to rely on that as a defence to that claim, and so while that does fall within my jurisdiction, I do not uphold Mr K's complaint about the Lender's response.

Finally, I have been given no reason to change my mind about the section 75 claim for breach of contract. I remain of the view, and for the same reasons as I gave in my main provisional decision, that there was no breach of contract by the Supplier for which the Lender would be liable.

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 Mr K to accept or reject my decision before 26 February 2026. But this final decision brings our service's involvement in his complaint to an end.

Richard Wood
Ombudsman