DRN-6011493

The complaint

Miss H complains Clydesdale Financial Services Limited trading as Barclays Partner Finance (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with her under Section 140A of the CCA.

Additionally, Miss H complains her loan was arranged by an unauthorised credit broker.

Miss H is represented in her complaint by a professional representative ("PR").

What happened

I issued a provisional decision on this complaint on 21 November 2025, in which I set out the background to the case and my provisional conclusions. A copy of that document is appended to and forms part of this final decision, so it's not necessary for me to go over all the details again. But to summarise:

- Miss H bought a timeshare on 20 January 2014, for £15,121, financed by a loan from the Lender. The loan was settled on 12 February 2015.
- Miss H complained to the Lender in November 2021, seeking to find it responsible for the Supplier having mis-sold the timeshare and associated loan. The grounds of complaint were:
    - The Supplier had misrepresented the timeshare, giving Miss H a claim against the Lender under Section 75 of the CCA.
    - The Supplier was responsible for other improper acts or omissions in relation to the sale of the timeshare, rendering the credit relationship between Miss H and the Lender unfair within the meaning of Section 140A of the CCA.
    - The loan had been arranged by an unauthorised credit broker, meaning it had been unenforceable.
    - The Lender had failed to carry out the affordability checks it should have done, before agreeing to lend to Miss H.

The Lender failed to respond to the complaint, which was then referred to the Financial Ombudsman Service.

In my provisional decision, I said that I considered there were parts of the complaint which fell outside the jurisdiction of the Financial Ombudsman Service, because they had been made too late after the events in question, and the rest of the complaint shouldn't be upheld. The full reasoning can be found in the appended provisional decision, but to summarise again:

- Miss H's complaint that her credit relationship with the Lender had been unfair to her

within the meaning of Section 140A of the CCA, had been brought too late for the Financial Ombudsman Service to deal with. This was because she had complained to the Lender more than six years after the end of the credit relationship, and more than three years after she ought reasonably have been aware she had cause to complain. She had not been prevented from bringing her complaint earlier as a result of exceptional circumstances.

- Miss H's complaint about the involvement of an unauthorised credit broker in arranging the loan didn't have merit, because the loan had not been arranged by an unauthorised credit broker.

- There was insufficient evidence that any deficiencies in the Lender's affordability or creditworthiness checks had led to Miss H ending up with a loan that wasn't affordable for her.

- It wouldn't have been fair or reasonable to expect the Lender to honour Miss H's Section 75 claim, because her claim was time-barred by the Limitation Act 1980, giving the Lender a complete defence to it.

I invited the parties to the complaint to let me have any further evidence, arguments or other submissions they wanted me to consider. Neither party to the complaint has done so, although the Lender has acknowledged the provisional decision.

The case has been returned to me to review once more.

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.

Having done so, and in light of the fact that neither party has put forward any new information for me to consider, it follows that I've arrived at the same conclusions I reached in my appended provisional decision, and for the same reasons.

This means I've been unable to consider Miss H's Section 140A complaint as this was brought too late, and unfortunately the rest of her complaint lacks merit for the reasons already explained.

My final decision

For the reasons summarised above, and explained in more detail in the appended provisional decision, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 7 January 2026.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at broadly the same conclusions as our Investigator, but my reasoning differs in some respects, so I'm issuing this provisional decisions to give the parties an opportunity to provide further submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is 5 December 2025. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from Miss H, or if they tell me they accept my provisional decision, I may arrange for the complaint to be closed as resolved without a final decision.

The complaint

Miss H complains Clydesdale Financial Services Limited trading as Barclays Partner Finance (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with her under Section 140A of the CCA.

Additionally, Miss H complains her loan was arranged by an unauthorised credit broker.

Miss H is represented in her complaint by a professional representative ("PR").

What happened

This complaint relates to a timeshare purchase made by Miss H from a timeshare provider (the "Supplier") on 20 January 2014. It appears Miss H had been a "Trial" member for a number of years up to this point. I've outlined the basic details below:

- The purchase made on 20 January 2014 (the "Time of Sale") was of a membership in the Supplier's "Fractional Club". Miss H bought 1,010 points in the Fractional Club, which could be used to book holiday accommodation annually (the "Purchase Agreement"). This type of timeshare was also asset-backed, meaning it included a share in the future sale proceeds of a specific timeshare apartment named on Miss H's purchase paperwork (the "Allocated Property"). The purchase cost £15,121.

- The Supplier arranged a loan (the "Credit Agreement") with the Lender for the purchase price. This was repayable over 180 months at £226.43 per month. Miss H repaid the loan early, settling it on 12 February 2015. Due to some administrative errors by the Lender, the loan was not closed on its systems until 23 October 2015.

- In November 2021, through PR, Miss H complained to the Lender, seeking to find it responsible for the Supplier having mis-sold the timeshare and associated loan. The individual concerns raised by PR can be found below.

<u>Misrepresentations by the Supplier giving rise to a claim against the Lender under Section 75 of the CCA</u>

These included:

- That the Supplier had falsely told Miss H that her purchase was a share in property which was an investment that would considerably increase in value.
- That the Supplier had falsely told Miss H that she could sell her Fractional Club membership back to the Supplier or to third parties easily at a profit.
- That the Supplier had falsely told Miss H that she would have "access to the holiday apartment" at any time, all year round.

Matters which rendered the credit relationship between Miss H and the Lender unfair to her under Section 140A of the CCA

These included:

- That the Lender had failed to carry out the affordability checks required by industry guidance and/or regulations.
- That the Purchase Agreement contained terms which were unfair to Miss H, such as terms allowing the Supplier to repossess the membership for minor breaches of the agreement.
- That the Supplier had sold and/or marketed the Fractional Club membership to Miss H as an investment, in contravention of the regulations on selling timeshares.

Other complaint issues

On Miss H's behalf, PR also raised another matter which doesn't fit under either of the headings above. This was an allegation that the entity which had arranged the Credit Agreement had not held the relevant permissions from the industry regulator when it had done so, meaning the loan had been unenforceable by the Lender.

The Lender failed to respond to the complaint, which was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who came to the following findings:

- The Financial Ombudsman Service couldn't look at Miss H's complaint that the Lender had participated in an unfair credit relationship with her, because it had been brought to us too late.

- It had not been unreasonable of the Lender to decline to honour a Section 75 claim, because the claim had been time-barred under the Limitation Act 1980.

- The Credit Agreement had not been arranged by an unauthorised credit broker.

- We were unable to look at her complaint that the Lender had failed to carry out appropriate affordability checks, for the same reason we were unable to look at the complaint about the allegedly unfair credit relationship.

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

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 published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context here.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide:

1. Whether the complaint (and to what extent) falls within the jurisdiction of the Financial Ombudsman Service; and (if relevant)

2. What's fair and reasonable in all the circumstances of the complaint, for any parts of the complaint our jurisdiction permits me to consider.

Having considered all the available evidence and arguments, my provisional conclusions are:

1. That Miss H's complaint that the credit relationship between her and the Lender was unfair to her, is not one the Financial Ombudsman Service has the jurisdiction to consider, because it has been brought too late.

2. That the rest of the complaint was not brought too late, but there is insufficient evidence to conclude these parts of the complaint ought to be upheld.

I'll now explain why.

<u>My provisional findings on our jurisdiction to consider Miss H's complaint</u>

The rules which outline the complaints the Financial Ombudsman Service has jurisdiction to consider are set out in the Financial Conduct Authority's Handbook, under the chapter named DISP, and these rules are therefore usually known as the "DISP rules".

DISP 2.8.2 R contains rules about how long a complainant has to bring a complaint. The relevant part of the rules says the following:

> *"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*
>
> *…*
>
> *(2) more than:*
>
> *(a) six years after the event complained of; or (if later)*
>
> *(b) three years from the date on which the complainant became aware (or ought reasonably*
>
> *to have become aware) that he had cause for complaint;*
>
> *Unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received; unless*
>
> *(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP*

2.8.2 R…was as a result of exceptional circumstances; or

…

(5) the respondent has consented to the Ombudsman considering the complaint where the time limits…have expired…"

In short, this means that in order for me to be able to consider Miss H's complaint, she needs to have made her complaint within six years of the event which the complaint relates to or, if this gives her longer, within three years of when she became aware (or ought reasonably to have been aware) of her cause to complain, unless there are exceptional circumstances which prevented her from bringing her complaint earlier or the Lender has consented to the complaint being brought late (which it hasn't in this case).

Section 75 Claim

In order to determine whether or not a complaint has been brought inside the relevant time limits, it's necessary to define the "event" the complaint relates to. As far as Miss H's complaint about the Lender's failure to honour her Section 75 claim is concerned, the event would normally be the Lender's decision to decline the claim. In this case the Lender failed to respond to the claim at all and, while it's therefore not straightforward to put a specific date on when the "event" occurred, it will have been well within six years of Miss H having referred the complaint to the Financial Ombudsman Service. So, I'm satisfied that this part of the complaint was made "in time" and, as I've not seen any other reason that it would fall outside of our jurisdiction, I will go on to consider its merits later in this provisional decision.

Unfair Credit Relationship

Miss H's complaint about the Lender's participation in a credit relationship that was unfair to her under Section 140A of the CCA, requires a slightly different analysis. It's now well established in the courts that a determination of whether or not a credit relationship complained of is unfair has to be made *"having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination"* – which is the date of the trial in the case of an existing credit relationship, or otherwise the date the credit relationship ended.

In practical terms, this means the event for the purposes of DISP 2.8.2 R was Miss H's credit relationship with the Lender which was alleged to have been unfair, and this event was a continuous one which came to an end on 12 February 2015 when she settled the loan in question. The six-year time limit would therefore begin to run from that point. There is an alternative argument that the Lender having made an error which resulted in the loan being left open until 23 October 2015 with a small residual balance, means time would not start running until that date. That would give Miss H until 23 October 2021 under the six-year limb of DISP 2.8.2 R.

It's not in dispute that Miss H's complaint was first made to the Lender in November 2021. This was more than six years after even 23 October 2015 and so her complaint was made too late under the six-year limb of DISP 2.8.2 R.

That leaves the three-year limb of the rule, which could, in theory, give Miss H more time to make her complaint.

The question which must be answered is whether Miss H complained within three years of when she became aware, or ought reasonably to have been aware, that she had cause to complain about the potential unfairness of her credit relationship with the Lender. I will say

here that the matters which could give rise to an unfair credit relationship are potentially very broad, and Miss H only needs to have been aware of one reason for the relationship to have potentially been unfair (or been in a position where she ought reasonably to have been aware of one reason) for the three-year clock to start. She wouldn't get a further three years if she later discovered another reason why the credit relationship may have been unfair.

Miss H also doesn't need to have had actual, exact knowledge of her cause to complain to the Lender, to start the three-year clock running. She just needs to have had constructive knowledge. What this means is that she needs to have had sufficient information to be put on the path of discovering that the Lender had been responsible for something that had, or might have, gone wrong and caused her a loss. Bearing this in mind, to start the three-year clock, I think Miss H should reasonably have been aware, or been put on the path to discovering, that:

1. There was a problem with the lending or the timeshare.
2. The problem had caused her, or was causing her, a loss.
3. Someone else may have been responsible for this loss, through their actions or failure to act.
4. This someone else may have been the Lender.

Having carefully read Miss H's complaint, I think she had this constructive knowledge, and therefore ought reasonably to have been aware she had cause to complain to the Lender, at around the Time of Sale itself in January 2014.

This is because Miss H stated in a witness statement, said to have been written in June 2020:

"…we were advised [by the Supplier] of the procedure to use finance which we didn't want or need to use but that was the only option."

So it seems Miss H considers she was put under pressure by the Supplier to take the Credit Agreement when she didn't want it or need it. She would (or should) have been aware that this had caused her a loss because she ended up paying significant amounts of interest which she wouldn't have otherwise. She might not have *known* that the Lender, as the other party to the Credit Agreement, might have borne some responsibility for the Supplier's allegedly improper actions in relation to arranging that agreement. However, in the circumstances, and given the fact that Miss H had felt railroaded into taking the loan from the Lender when she didn't want it, I think it would have been reasonable to have expected her to carry out enquiries and seek advice when her concerns had arisen, in order to establish what her rights were. Had she done so, I think this would have led her to discover that the Lender, as the connected lender which had financed the purchase, may have borne some responsibility for the Supplier's alleged failings.

And with all that being the case, I think Miss H ought reasonably to have been aware that she had cause to complain about the Lender participating in a potentially unfair credit relationship with her from around the Time of Sale, and certainly more than three years before she complained in November 2021. And so I don't think the three-year limb of DISP 2.8.2 R gives Miss H any longer to have made the complaint than the six-year limb.

In light of the above, I am minded to conclude that that we do not have the power to consider the complaint about the Lender's alleged participation in a credit relationship which was unfair to Miss H, unless there were exceptional circumstances preventing her from bringing the complaint in time. PR hasn't mentioned any such circumstances specifically in its response to our Investigator's assessment, but it did say that Miss H had only found out about the relevant causes of complaint when a lawyer reviewed her case in July 2020. I

don't think this qualifies as exceptional circumstances. I've explained above the importance of the concept of constructive knowledge – Miss H doesn't need to have *known* all of her causes of complaint specifically, she just needs to have been on the path to discovering them. Which I think she was from January 2014.

It follows that I'm minded to decide that Miss H's complaint that her credit relationship with the Lender was unfair to her is not a complaint the Financial Ombudsman Service can consider.

Irresponsible Lending

I've thought about whether Miss H might have enjoyed a longer time to complain about the Lender's decision to lend to her, if that part of complaint was reframed as a complaint not about an unfair credit relationship, but as a complaint that the Lender breached its regulatory obligations in relation to lending. Unlike our Investigator, I don't think Miss H's specific facts and circumstances would have led to her having a particular reason to think that the Lender might have done something wrong in relation to any checks it carried out before lending to her.

On the contrary, it doesn't seem she has ever had any concerns about this or about her ability to afford the loan – indeed she say she didn't need it at the time. It seems likely that Miss H only discovered that this might have been a problem much later, probably when the lawyer reviewed her case in 2020. She brought her complaint within three years of that date, so I think this aspect of her complaint is "in time".

Unauthorised credit broker

Similarly to Miss H's freestanding (separate) complaint about the Lender's alleged failure to carry out appropriate checks before lending to her, I see no obvious reason why she would have appreciated that the company which arranged the Credit Agreement didn't hold the required permissions from the regulator to do so, or even that this was something which was important or which might have caused her a loss. It seems likely this concern arose from the lawyer's review in July 2020. Miss H brought her complaint within three years of that date and so I also think this part of her complaint is "in time."

The extent of our jurisdiction over the complaint thus set out, I will go on to consider the merits of the parts of the complaint I'm minded we have the power to look at.

Miss H's Section 75 Complaint

Section 75 of the CCA gives a borrower who has paid for goods or services with certain kinds of credit (such as the loan with the Lender) the right to make a "like claim" against the creditor in respect of any breach of contract or misrepresentation by the supplier of those goods or services, so long as certain conditions are met.

As a general rule, I think it's reasonable for creditors to reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 ("LA"), as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would have been available in court. So, it is relevant to consider whether Miss H's Section 75 claim was time-barred under the LA before PR put the claim to the Lender on his behalf.

As I mentioned above, a claim under Section 75 is a "like claim". This means it mirrors the claim Miss H could have made against the Supplier.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued. A claim for breach of contract against the Supplier would also be subject to a limitation period of six years from the date on which the cause of action accrued.

Any claim against a lender under Section 75 is also *"an action to recover any sum by virtue of any enactment"* under Section 9 of the LA. Such claims also have a time limit of six years from the date the cause of action accrued.

In claims for misrepresentation, the cause of action accrues at the point a loss is incurred. In Miss H's case, that's when she entered the agreement to purchase the timeshare, and the related Credit Agreement, on 20 January 2014. This would be mirrored in the claim against the Lender.

Miss H first notified the Lender of her Section 75 claim in November 2021, more than six years after the cause of action accrued in relation to their claims for misrepresentation. So I don't think it would be fair or reasonable to expect the Lender to honour the part of the claim relating to the Supplier's alleged misrepresentations.

PR has argued that the limitation period can be extended in cases of concealment or fraud, suggesting that the Supplier concealed from Miss H that the Fractional Club membership was an investment, meaning she discovered this fact only later.

There are provisions within the LA to extend limitation periods in such circumstances, however PR's arguments on this point focus on the Section 140A part of the complaint, and this part of the complaint falls outside our jurisdiction for the reasons I explained earlier, which are unrelated to the provisions of the LA. And I don't think PR's arguments assist the claim in relation to misrepresentation, because the concealment of the product being an investment is inconsistent with PR's allegation that the Supplier falsely *told* Miss H, at the Time of Sale, that the product *was* an investment.

The checks carried out by the Lender before agreeing the Credit Agreement

PR says the Lender didn't carry out the right checks before agreeing to lend to Miss H. The available information about what checks the Lender carried out is very limited, but in order for this part of the complaint to be successful, it would need to be demonstrated that the Credit Agreement was also *unaffordable* for Miss H. No evidence of this has been provided, and the fact that Miss H says she didn't want or need the loan, suggests it was likely to have been affordable. In light of this, I don't think this aspect of the complaint should be upheld.

Miss H's complaint that the Credit Agreement was arranged by an unauthorised credit broker

PR says that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement as a result, and that Miss H is entitled to a refund of what she's paid along with additional compensation.

The Time of Sale in this case was shortly before the Financial Conduct Authority took over the regulation of consumer credit from the former Office of Fair Trading ("OFT"). Under the OFT regulatory regime, entities wishing to broker consumer credit agreements would normally hold a consumer credit licence from the OFT.

Having looked at the Financial Ombudsman Service's internal records, I can see that the company named on the Purchase Agreement as the sales company held, at the Time of

Sale, such a licence. Confusingly, the Credit Agreement doesn't name this company and only appears to identify the building or location in which the sale took place, but I think it's most likely that the sales company was the entity which brokered the agreement. And in the absence of any evidence to suggest that its licence did not cover credit broking, I am not persuaded that the Credit Agreement was arranged by an unauthorised credit broker.

My provisional decision

For the reasons explained above, I am currently minded to decide that:

1. The Financial Ombudsman Service does not have the jurisdiction to consider Miss H's complaint that the credit relationship between her and Clydesdale Financial Services Limited was unfair to her under Section 140A of the CCA.

2. There's no evidence the Credit Agreement was unaffordable for Miss H, meaning any deficiencies in the Lender's checks prior to lending to her did not cause her detriment.

3. The Credit Agreement was not arranged by an unauthorised credit broker.

4. Clydesdale Financial Services Limited did not act unfairly or unreasonably in failing to honour a Section 75 claim from Miss H in respect of the Purchase Agreement.

Will Culley
Ombudsman