DRN-6013432

Financial Ombudsman Service

The complaint

Mr H complains Clydesdale Financial Services Limited (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 him under Section 140A of the CCA.

What happened

I issued a provisional decision on this case on 23 October 2025, in which I set out the background to the complaint and my provisional conclusions. A copy of that provisional decision is appended to and forms part of this final decision. As a result, it's not necessary for me to go over all the details again, but to summarise:

- Mr H bought a timeshare from a timeshare provider (the "Supplier") on 2 December 2013. The purchase cost £64,765, reduced to £7,109 after the trade-in of an existing timeshare. The balance was financed by a loan from the Lender of the same amount, arranged by and paid to the Supplier. The loan was settled on 17 January 2015.
- Mr H complained, via PR, to the Lender, in August 2022. He sought to find it responsible for the Supplier having mis-sold the timeshare and associated loan. The general grounds of complaint were:
    - That the Supplier had misrepresented the timeshare to Mr H, giving him a claim against the Lender under Section 75 of the CCA.
    - That the Supplier was responsible for other improper acts or omissions which had rendered the credit relationship between Mr H and the Lender, unfair to him.
    - The Lender had failed to carry out the appropriate creditworthiness checks before lending to Mr H.
    - The loan had been arranged by an unauthorised credit broker, making it unenforceable.

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

In my provisional decision I said that I was unable to consider parts of Mr H's complaint because they had been made too late for us to have the power to look into them, while the rest of the complaint should not be upheld. The full reasons are set out in the appended provisional decision, but to summarise again:

- Mr H's complaint that his credit relationship with the Lender was unfair to him, had been made more than six years after the credit relationship had ended, and more than three years after he ought reasonably to have known he had cause to complain, and he had not been prevented from complaining sooner as a result of exceptional circumstances. This meant the complaint had been made too late for the Financial

Ombudsman Service to consider.

- Regardless of whether the Lender's affordability or creditworthiness checks had been adequate, there was no evidence to suggest that the loan had been unaffordable for Mr H.

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

- As Mr H's Section 75 claim was time barred under the Limitation Act 1980, giving the Lender a complete defence to his claim, it hadn't been unreasonable of the Lender to decline the claim.

I asked the parties to the complaint to let me have any further submissions they wanted me to consider, before I made my decision final. The Lender said it had nothing further to add. PR, on behalf of Mr H, did not reply.

The case has now 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 because neither party to the complaint has provided any further comment, evidence or arguments for me to consider, I see no reason to depart from the findings I made in my appended provisional decision, which I make for the same reasons.

It follows that I have not considered Mr H's Section 140A complaint because it was made too late, and that I won't be upholding the rest of his complaint.

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 Mr 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 decided to issue this provisional decision to give the parties to the complaint an opportunity to provide further submissions, before I make my decision final.

The deadline for both parties to provide any further comments or evidence for me to consider is **6 November 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from Mr 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

Mr H complains Clydesdale Financial Services Limited (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 him under Section 140A of the CCA.

Mr H is represented in his complaint by a professional representative ("PR").

What happened

This complaint relates to a timeshare purchase made by Mr H from a timeshare provider (the "Supplier") on 2 December 2013. Mr H had made several previous purchases from the Supplier, dating back to November 2002, but this was his final purchase.

- The purchase made on 2 December 2013 (the "Time of Sale) was of a membership in the Supplier's "Fractional Club". Mr H already had a membership in the Fractional Club, however on this date he changed this to a different "version" of the same membership, trading in the previous membership for the new one. Mr H bought 4,180 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 Mr H's purchase paperwork (the "Allocated Property"). The purchase cost £64,765. Mr H was given a trade-in value of £57,656 for his previous membership meaning he had a balance of £7,109 to pay.

- The Supplier arranged a loan (the "Credit Agreement") with the Lender for the balance of the purchase price. This was repayable over 180 months at £106.97 per month. Mr H settled the loan early, on 17 January 2015.

- In August 2022, through PR, Mr H complained to the Lender, seeking to find it responsible for the Supplier having mis-sold the timeshare and associated loan. The individual mis-selling concerns raised by PR could be grouped under two general headings, which I've set out 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 Mr H that his purchase was a share in property which was an investment that would considerably increase in value.
- That the Supplier had falsely told Mr H that he could sell his Fractional Club membership back to the Supplier or to third parties easily at a profit.
- That the Supplier had falsely told Mr H that he would have “access to the holiday apartment” at any time, all year round.

In a witness statement provided later, Mr H referred to other misrepresentations he said the Supplier had made, including that it had told him that the annual management fees relating to the membership would only go up by a small amount each year, if at all, but that turned out to be false.

Matters which rendered the credit relationship between Mr H and the Lender unfair to him

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 Mr 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 Mr H as an investment, in contravention of the regulations on selling timeshares.

In the witness statement that was shared with the Financial Ombudsman Service much later, Mr H also recalled the Supplier having put him under a lot of pressure to make the purchase.

Other complaint issues

On Mr 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 rejected the complaint, arguing essentially that the complaint had been made too late for it to have any responsibility for it. The matter was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, came to the following findings:

- The Financial Ombudsman Service didn’t have the jurisdiction (power) to consider large parts of Mr H’s complaint. These included:
    - Whether or not the Lender’s credit relationship with Mr H had been rendered unfair to him by any of the matters mentioned by PR.
    - Whether or not the Lender had broken any rules around assessing the affordability of the credit agreement.
- 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 unregulated credit broker.

Mr 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 have 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 Mr H's complaint that the credit relationship between him and the Lender was unfair to him, 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 the Lender's decision not to uphold it was not unfair or unreasonable.

I'll now explain why.

<u>My provisional findings on our jurisdiction to consider Mr 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 Mr H's complaint, he needs to have made his complaint within six years of the event which the complaint relates to or, if this gives him longer, within three years of when he became aware (or ought reasonably to have been aware) of his cause to complain, unless there are exceptional circumstances which prevented him from bringing his complaint earlier or the Lender has consented to the complaint being brought late (which it hasn't in this case).

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 Mr H's complaint about the Lender's failure to honour his Section 75 claim is concerned, the event is the Lender's decision to decline the claim. This decision was communicated to Mr H (via PR) on 4 August 2022, and his complaint was referred to the Financial Ombudsman Service a little later than five months after this. 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.

Mr H's complaint about the Lender's participation in a credit relationship that was unfair to him 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 Mr 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 17 January 2015 when he settled the loan in question. The six-year time limit would therefore begin to run from that point.

It's not in dispute that Mr H's complaint was first made to the Lender in August 2022. This was more than six years after 17 January 2015 and so his 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 Mr H more time to make his complaint.

The question which must be answered is whether Mr H complained within three years of when he became aware, or ought reasonably to have been aware, that he had cause to complain about the potential unfairness of his 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 Mr H only needs to have been aware of one reason for the relationship to have potentially been unfair (or been in a position where he ought reasonably to have been aware of one reason) for the three-year clock to start. He wouldn't get a further three years if he later discovered another reason why the credit relationship may have been unfair.

Mr H also doesn't need to have had actual, exact knowledge of his cause to complain to the Lender, to start the three-year clock running. He just needs to have had constructive knowledge. What this means is that he 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 him a loss. Bearing this in mind, to start the three-year clock, I think Mr 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 him, or was causing him, 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 Mr H's complaint, I think he ought reasonably to have been aware that he had cause to complain to the Lender within a couple of years of having made the purchase in December 2013.

This is because of two things that Mr H mentions in his later witness statement. Mr H complained that the Supplier had put him under a lot of pressure to make the December 2013 purchase, along with taking the associated Credit Agreement. The feeling of being put under pressure was something Mr H was aware of at the Time of Sale. Mr H also mentioned having problems with the membership itself, in that the annual fees kept increasing by large amounts when he'd been advised they wouldn't. Mr H doesn't say when it was that he found this out, but given the fees were due each year, I think it's reasonable to conclude that he discovered the issue within a couple of years of the Time of Sale.

So Mr H alleged that he was put under pressure during the sales process, and that he'd had problems with the membership he had ended up buying as a result. The Credit Agreement he'd found himself committed to was also costing him interest, and on top of that he had other financial commitments associated with Fractional Club membership, which were set to last for many years. The contract was also a complicated one which included an interest in an overseas property. In the circumstances I think it would have been reasonable to have expected Mr H to carry out enquiries and seek advice when his concerns about the membership and how it had been sold to him first arose, in order to establish what his rights were. Had he done so, I think this would have led him 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 Mr H ought reasonably to have been aware that he had cause to complain about the Lender participating in a potentially unfair credit relationship with him within the first few years of the Time of Sale, and certainly more than three years before he complained in August 2022. And so I don't think the three-year limb of DISP 2.8.2 R gives Mr H any longer to have made the complaint than the six-year limb.

In light of the above, I am minded to conclude that Mr H had six years from 17 January 2015 to make his complaint to the Lender about the alleged unfair credit relationship, for it to have been made in time for the purposes of the Financial Ombudsman Service's rules. The complaint was not made within that period of time, and so I must conclude that we do not

have the power to consider the complaint about this, unless exceptional circumstances preventing Mr H from bringing the complaint in time. Our Investigator noted that they couldn't see that there were any exceptional circumstances which might have caused Mr H to have referred his complaint late. I agree with that observation. And PR hasn't mentioned any such circumstances in its response to this assessment, so I'm currently of the view that Mr H was not prevented from making his complaint in time as a result of exceptional circumstances.

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

Our Investigator also concluded that, were Mr H's complaint about the Lender failing to carry out the checks required by the rules or guidance at the time to be considered a separate complaint from Mr H's complaint about the fairness of the credit relationship, then this had also been made too late for essentially the same reasons.

I'm not sure I completely agree with our Investigator's conclusions on this point, although I can understand their rationale and ultimately it makes no difference to the overall outcome of this matter for Mr H. The six-year limb would run from the date the Lender decided to lend to Mr H in December 2013. Clearly, he brought his complaint outside of this timeframe. However, I see no obvious reason why Mr H, in his *particular* circumstances, would or should have appreciated that the Lender may not have carried out the checks that it should have done before agreeing to lend to him, so I have given him the benefit of the doubt on this point and am minded to find that this part of his complaint was not made too late.

Finally, our Investigator considered Mr H's complaint about the Credit Agreement having been arranged by an unauthorised credit intermediary had *not* been made too late. I agree – while once again the complaint event took place more than six years before Mr H complained, I see no reason why, in his circumstances, he'd have known or should reasonably have known that the company arranging the Credit Agreement didn't hold the relevant permissions, or even that it needed to.

<u>Mr H's Section 75 Complaint</u>

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 Mr 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 Mr 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 Mr H's case, that's when he entered the agreement to purchase the timeshare, and the related Credit Agreement, on 2 December 2013. This would be mirrored in the claim against the Lender.

Mr H first notified the Lender of his Section 75 claim in August 2022, more than six years after the cause of action accrued in relation to his claims for misrepresentation. So I don't think it was unfair or unreasonable of the Lender to decline 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 Mr H that the Fractional Club membership was an investment, meaning he 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 explained earlier. 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 Mr H, at the Time of Sale, that the product was an investment.

<u>Mr H's complaint that the Lender failed to carry out the checks it should have</u>

I can see no reason why this part of the complaint should be successful, because even if it was the case that the Lender hadn't done everything it should have done before lending to Mr H, it would need to be shown that the loan was actually unaffordable for him, for it to be fair or reasonable for the Lender to compensate him.

No such evidence has been provided in this case, and Mr H's early repayment of the loan would normally (though not always) suggest the loan was affordable. It follows that I'm not minded to say this part of the complaint should be upheld, even if it falls within the Financial Ombudsman Service's jurisdiction.

<u>Mr H's complaint that the Credit Agreement was arranged by an unauthorised credit broker</u>

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 Mr H is entitled to a refund of what he'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 Mr H's complaint that the credit relationship between him and Clydesdale Financial Services Limited was unfair to him under Section 140A of the CCA.
2. There's no evidence that any failing by Clydesdale Financial Services Limited in its checks prior to lending to Mr H, led to Mr H experiencing any detriment.
3. Clydesdale Financial Services Limited did not act unfairly or unreasonably by declining Mr H's claim brought under Section 75 of the CCA.
4. The Credit Agreement was not arranged by an unauthorised credit broker.

I now invite the parties to the complaint to respond to this provisional decision, by **6 November 2025**.

Will Culley
Ombudsman